

Virginia Regulatory Town Hall Agency Background Document Proposed Regulation

Agency Name: Department of Social Services
VAC Number: 22 VAC 40-191-10 et seq.
Regulation Title: Minimum Standards for Background Clearances for Child Welfare Agencies
Action Title: Proposed
Date:

Summary:

The regulation establishes background clearances for criminal convictions and founded complaints of child abuse and neglect for child welfare agencies. It prohibits the licensing, approval, registration, and exemption of facilities when designated persons associated with the facility have certain criminal convictions or have ever been the subject of a founded complaint of child abuse or neglect. Facilities are prohibited from using a person for certain roles if the person has certain criminal convictions or has ever been the subject of a founded complaint of child abuse or neglect.

Licensed child day centers and licensed child day center systems are not included in this regulation.

The Regulation for Criminal Record Checks for Child Welfare Agencies, 22 VAC 40-190-10 et seq. is being repealed. The revisions required to amend 22 VAC 40-190-10 et seq. were so extensive that it is more efficient to repeal the existing regulation and promulgate a new regulation. The proposed new regulation incorporates significant *Code of Virginia* changes mandated by the 1998 General Assembly amendments, organizational changes requested during public comment, content changes requested during public comment, and clarifications.

Basis:

The State Board of Social Services has the statutory authority to promulgate this regulation based on *Code of Virginia* sections 63.1-25. The State Board is authorized to regulate the following §§ 63.1-198; 63.1-198.1; 63.1-198.2; 63.1-198.3; 63.1-198.4 and 63.1-199 of the *Code of Virginia*. These *Code* sections establish background clearances for criminal convictions and founded complaints of child abuse or neglect

and set prohibitions if a person is found to have certain criminal convictions or has ever been the subject of a founded complaint of child abuse or neglect.

Section 63.1-198 applies to applicants for licensure and registration. Section 63.1-199 applies to denying or approving applicants. Section 63.1-198.1 applies to employees and volunteers of child welfare agencies. It also applies to caretakers approved by family day care, all adults living in the family day home, and those individuals approved by child-placing agencies as foster or adoptive parents. Section 63.1-198.2 applies to persons employed by, volunteering for, or who are officially involved in the day-to-day operations of a religious exempt center. Section 63.1-198.3 applies to persons who reside in a family day home.

Section 63.1-198.4 establishes a waiver for any person who seeks to operate, volunteer or work at a child welfare agency who is disqualified because of a conviction in his criminal record review. The waiver can not be granted for certain barrier crimes.

Purpose:

The *Code of Virginia* mandates background clearances for criminal convictions and founded complaints of child abuse or neglect for child welfare agencies. The *Code* prohibits operating, volunteering, or working at a child welfare agency for persons who have certain convictions or a founded complaint of abuse or neglect. This is to protect children who are in the care of child welfare agencies. Persons with convictions involving crimes against minors, violence and sex offenses, or with a founded complaint of child abuse or neglect may endanger and harm children.

The agency has decided to promulgate a new regulation titled Minimum Standards for Background Clearances for Child Welfare Agencies, 22 VAC 40-191-10 et seq. for the following reasons:

- Significant changes to the *Code of Virginia* were mandated by the 1998 General Assembly.
- An emergency regulation, Regulation for Criminal Record and Child/Neglect Registry Checks for Child Welfare Agencies, was promulgated to address the *Code* changes. This regulation was effective May 19, 1999 and will cease being effective May 18, 2000.
- The revisions required to amend 22 VAC 40-190-10 et seq. were so extensive it is more efficient to repeal the existing regulation and promulgate a new regulation. Regulation for Criminal Record Checks for Child Welfare Agencies, 22 VAC 40-190-10 et seq. is being repealed.

- The proposed new regulation incorporates organizational changes requested during public comment, content changes requested during public comment, and clarifications.

Substance:

A summary of substantive changes is listed below. Attached is a detailed matrix that cross-references citations from the regulation being repealed to the new proposed regulation. The matrix also identifies citations that are new to the new proposed regulation.

The Minimum Standards for Background Clearances for Child Welfare Agencies, 22 VAC 40-191-10 et seq. incorporates the substantive changes listed below.

- A. The following changes that were mandated by the 1998 General Assembly and became effective July 1, 1998.
1. Expanding barrier crimes;
 2. Including prior adult convictions and juvenile convictions and adjudications of delinquency as part of the barrier crimes;
 3. Mandating child abuse and neglect central registry checks be conducted on required persons;

NOTE: Requiring central registry checks was added to the criminal record sections of the *Code* for child welfare agencies effective July 1, 1998. Requiring central registry reports is new for staff of child-placing agencies. However, many child-placing agencies choose to obtain central registry reports on staff. Central registry reports for staff of religious exempt child day centers is new. However, the majority of facilities addressed in Chapter 191 were required prior to July 1, 1998 to have central registry checks by the regulations that exist for the facility. Below are facilities that have been required prior to July 1, 1998 to have central registry checks.

Facility and regulation

Licensed family day homes
Minimum Standards for Licensed Family Day Homes

Family day homes approved by family day systems
Minimum Standards for Licensed Family Day-Care Systems

Licensed family day systems

Minimum Standards for Licensed Family Day-Care Systems

Voluntarily registered family day homes

Voluntary Registration of Family Day Homes, Requirement for Providers

Foster and adoptive homes approved by child-placing agencies

Minimum Standards for Licensed Child-Placing Agencies

Licensed independent foster homes

Minimum Standards for Licensed Independent Foster Homes

4. Adding a founded complaint of child abuse or neglect as a prohibition to licensure, registration, approval, employment, volunteering, or for certain officers and board members;
 5. Adding a founded complaint of child abuse or neglect as a prohibition to operating or residing in a family day home;
 6. Requiring that if an applicant is denied approval or employment due to a founded complaint of child abuse or neglect that the person be given a copy of the report;
 7. Expanding of prohibitions to be included in a sworn disclosure statement;
 8. Including that religious exempt child day centers should be included in the regulation; and
 9. Establishing a waiver request for being disqualified due a child abuse or neglect founded complaint or felony conviction within the last five years with the restriction that certain convictions can not be waived.
- B. The Child Day-Care Council approved the below items for the Minimum Standards for Background Clearances for Licensed Child Day Centers, 22 VAC 15-051-10 et seq. These items have been incorporated into the regulation for child welfare agencies.
1. Have a separate regulation for licensed child day centers.
 2. Change the regulation name to **Background Clearances**. This makes referencing the regulation easier and more readable.
 3. Where possible, reorganize the document so the sworn disclosure statement, criminal record report, and Child Abuse and Neglect Central Registry report do not duplicate the same statements and make the document longer.

4. Add definitions for barrier crimes, central registry report, child abuse/neglect history record request, child abuse and neglect registry, child welfare agency, commissioner, contract agency, contract employee, department, disqualifying background, involved in day-to-day operations, and licensed.
5. Modify definition for applicant for licensure, barrier crimes, central criminal records exchange and sworn disclosure statement and remove definition for officer of the board.
6. Clarify which employees, contract employees and officers and board members are affected by background clearances. This has been done through the definitions of an employee, contract employee, officer of the board and involved in the day-to-day operations of the facility. Employees, contract employees and board members that are affected by background clearances are ones that are (i) alone with, in control of or supervising one or more children or (ii) involved in the day to day operations of a facility.

“Involved in the day-to-day operations of the center” means being:
(i) in a supervisory or management position, making daily decisions regarding the operation of the facility or (ii) counted by the facility for purposes of staff-to-children ratios.
7. Include contract employees for background clearances when the agreement is with the parent but the service is being delivered to the child at the facility. Also clarify that contract employees affected by background clearances are those contract employees that provide services to a child or children. A definition of contract employee has been added to the definitions.
8. The center shall not be penalized if the center has submitted the criminal history record request and child abuse/neglect history record request within seven days of the persons being employed or volunteering.
9. For contract employees and substitute staff from temporary agencies allow for the background clearances to be viewed, verified, and copies maintained.
10. For contract employees and substitute staff from temporary agencies allow a background clearance to be accepted if it is not dated more than 12 months prior to the date of when the contractor begins providing services at the facility.
11. If the Department becomes aware that a person has a disqualifying background; the department shall be permitted to release this information to the facilities that have a legitimate interest.

12. Require a copy, not an original, of the central registry report. Only a copy is required by Code and provides the same flexibility as the copy of a criminal record report.
13. Change wording on verifying of background clearances to be “the facility designee shall be charged with knowledge of all information in the clearance.”
14. If an individual leaves the facility and the criminal record report is 90 days old or less, allow the individual to take the original. The center is to keep a copy, with a statement that it is a photocopy of an original that the facility verified. The regulation should still require that the original criminal record report be obtained and filed at the location of the facility where the person is currently working or volunteering.
15. Allow a criminal record report and a central registry check to remain valid as long as the period of separation does not exceed 12 consecutive months. Facilities would not incur the cost of new checks for employees used in the summer such as college students. This would aid centers such as Parks and Recreation and summer programs that employ students for the summer. This would be a cost-effective change.
16. Allow copies of the criminal record report to be maintained at non-primary place of work. If a person works at multiple facilities, he will no have to obtain multiple original criminal record reports. The copy of the criminal record report must carry statement that the center designee has viewed and verified the original.
17. Not require the sworn disclosure statement to be attached to the criminal record report and central registry report. Add same retention requirements as the criminal record report and central registry report. Including the Sworn disclosure statement as a background clearance accomplished this.

C. The below department recommendations:

1. Clarify terms by adding definitions for applicant for approval, approved, child welfare agency, department representative, good character and reputation, other person or persons officially involved in the operations of religious exempt center, registered, religious exempt center, and sex offense felony for family day home and modifying definition of facility.
2. Comply with Requirements for Providers for Voluntarily Registered Family Day Homes that require background clearances for provider assistants. Provider assistant in a family day home was added to the definition of employee in 22 VAC 40-191-10.

3. Reference that Licensed Child Day Care Systems requirements are in 22 VAC 15-051-10 et seq.
4. Comply with § 63.1-198.1 for the *Code of Virginia* that states that the provision of this section of the *Code* shall apply only to volunteers who will be alone with any child in the performance of their duties. The volunteer definition in 22 VAC 40-191-10 has been written to state this.
5. Provide a list of persons affected by background clearances.
6. Provide a list of facilities subject to background clearances.
7. Maintain the safety of children in care by requiring adults, age 18 years and older, who reside in a (i) licensed independent foster home or (ii) an adoptive or a foster home approved by a licensed child placing agency to obtain background clearances.
8. Comply with Minimum Standards for Licensed Family Day Homes that require persons age 14 years and older to have central registry checks. This regulation was expanded to include the other types of family day homes, voluntarily registered family day homes and family day homes approved by family day systems. This change complies with § 63.1-198.3 of the *Code of Virginia*. This section states it shall be unlawful for any person to operate a family day home if he, or if he knows that any other person who resides in the home, has been convicted of specified sex offense felonies or is the subject of a founded complaint of child abuse or neglect.
9. Comply with § 63.1-198, which requires background clearances prior to a person assuming board duties. In the repealed regulation, this had been 21 days.
10. Inform the person that a background clearance is being done. The Child Day-Care Council approved this for the Minimum Standards for Background Clearances for Licensed Child Day Centers.
11. Expand the acceptance of background clearances that are not dated more than 90 days to include officers and board members, persons residing in the home, licensees, registrants, and person who signs statement of intent to operate a religious exempt center.

Issues:

Attached are matrix charts, which list the advantages and disadvantages of proposed regulation.

Alternatives:

The department considered the following alternatives to the proposed chapter.

- Promulgate no regulation and at the end of the emergency regulation facilities would revert to Chapter 190, Regulation for Criminal Record Checks for Child Welfare Agencies.

Significant changes to the *Code of Virginia* were mandated by the 1998 General Assembly and Chapter 190 would not address the mandates.

- Promulgate the emergency regulation as the proposed regulation.

Public comment suggested organizational, content, and clarification changes. Several questions from providers and state staff indicated where clarifications were needed.

- Amend Chapter 190, Regulation for Criminal Record Checks for Child Welfare Agencies.

The revisions required to amend 22 VAC 40-190-10 et seq. were so extensive it is more efficient to repeal the existing regulation and promulgate a new regulation. Regulation for Criminal Record Checks for Child Welfare Agencies, 22 VAC 40-190-10 et seq. is being repealed.

Public Comment:

- A. The recommendations received from the Child-Day Care Council committee were incorporated.
- B. Representatives from religious exempt child day centers expressed concern that criminal record reports and central registry reports must be obtained prior to persons beginning employment or volunteering. Other facilities are allowed 21 day to obtain these clearances. With the difficulty of finding staff and delays in obtaining clearance reports, the religious exempt facilities expressed that they may not be able maintain required staff levels when a new employee or volunteer is needed.

Agency Response: The §63.1-198.2 of the *Code of Virginia* requires that for prospective employees or volunteers or other persons officially involved in the day-to-day operations are to first obtain criminal record and central registry checks.

Clarity of the Regulation:

Regulatory staff at central and regional levels and two day care providers reviewed the proposed regulation. Comments indicated that the flow is improved and easier to follow. The use of charts provides a quick and easy reference. The Child Day Care Council has approved the Minimum Standards for Background Clearances for Licensed Child Day Centers, which is formatted similar to this regulation. A more detail review of the proposed regulation will be done during the sixty-day public comment period.

Periodic Review:

No later than three years after the proposed regulation becomes effective, the agency will initiate a review and re-evaluation of the regulation to determine if it should be continued, amended, or terminated, and the specific and measurable goals the proposed regulation is intended to achieve.

Fiscal Impacts:

The regulation provides for clearances required by *Code*. Regulation changes have minimized a facility or person having to obtain duplicate clearances.

The fees collected offset the cost to State Police of processing criminal record clearances. The fees collected offset the cost to the Department of Social Services for processing central registry reports.

Local departments of social services are not affected by this regulation.

The background clearances are the responsibility of the facility. Licensing inspectors confirm additional background clearances have been obtained as part of the licensing and registration approval process or during inspection visits.

It is the staff at these facilities that are required to have background clearances. Either the facility or the person having the background clearance done would incur the costs. The cost of the State Police criminal record clearance is \$15.00 and the cost of the child abuse and neglect central registry clearance is \$5.00

Although there are approximately 7,569 facilities regulated by this Chapter, the background clearances are not new for most facilities.

Listed below are changes that have fiscal impact. The fiscal impacts show the number of facilities affected and the costs per person. There are no figures available on the number of persons impacted.

- **CHANGE:** Require child abuse and neglect central registry clearance at initial application for licensure, registration, approval, and exemption.

The child abuse and neglect central registry report, as a background clearance, is required at initial application for licensure, registration, approval, or exemption.

This is to comply with 1998 Code changes mandating child abuse and neglect central registry reports. The majority of facilities have been obtaining central registry clearances prior to July 1, 1998, as the facility regulation required this. Central registry clearances became a requirement for licensed child-placing agencies and religious exempt child day centers effective July 1, 1998. Prior to this date, some child-placing agencies chose to obtain central registry clearances.

Fiscal impact: It is estimated that annually there are three new licensed child-placing agencies and 37 new religious exempt centers. Cost per person is \$5.00.

- **CHANGE:** Require child abuse and neglect central registry clearance when a facility hires an employee or has a volunteer begin service.

This is to comply with 1998 Code changes mandating child abuse and neglect central registry reports. The majority of facilities have been obtaining central registry clearances prior to July 1, 1998, as the facility regulation required this. Requiring central registry clearances became a new requirement to licensed child-placing agencies and religious exempt child day centers effective July 1, 1998. Prior to this date, some child-placing agencies chose to obtain central registry clearances.

Fiscal impact: There are approximately 62 licensed child-placing agencies and 816 religious exempt centers. There is no estimate on the number of new employees or volunteers that begin work annually with these facilities. The facilities have been required to obtain the clearances since July 1, 1998. Cost per person is \$5.00.

- **CHANGE:** Background clearances for adults residing in homes

Require background clearances for adults, age 18 years and older who reside in a (i) licensed independent foster home or (ii) an adoptive or a foster home approved by a licensed child placing agency.

Providers will incur a new cost of obtaining criminal record reports and child abuse and neglect registry reports for persons that reside in their home that are age 18 years or older.

Fiscal impact: There are approximately 3100 foster and adoptive homes and 4 licensed independent foster homes. There are no statistics on the annual number of approvals of foster and adoptive homes approved by licensed child placing agencies. Approval and licensure are the main point at which the cost of clearances would be incurred. Background clearances are required (i) at initial licensure or approval of a facility, (ii) when a person age 18 or over begins residing in the home, or (iii) a person residing in the home turns age 18. The cost for both clearances is \$20.00.

- **CHANGE:** Require child abuse and neglect central registry clearance for persons age 14 years and older residing in a licensed, registered, and approved family day homes.

Added requiring child abuse and neglect central registry clearances reports for persons age 14 years and older who reside in a licensed family day home. This was done to be consistent with Minimum Standards for Licensed Family Day Homes that already require the central registry clearance. This regulation was expanded to include the other types of family day homes, which are the voluntarily registered family day homes and family day homes approved by licensed systems.

Fiscal impact: There is no fiscal impact for licensed family day homes as these homes have been obtaining the clearance. There are 1033 voluntarily registered homes and 625 family day homes approved by licensed systems. Voluntarily registered homes must obtain background clearances, including the child abuse and neglect central registry clearance, every two years at their renewal application. Family day homes approved by licensed family day systems will have to obtain the central registry clearance mainly at the point of approval. Additional clearances will be required (i) when a person age 14 or over begins residing in the home or (ii) a person residing in the home becomes age 14. The cost per person is \$5.00.

- **CHANGE:** There are several changes that will slightly reduce the number of background clearances. These are:
 - Defining which employees, contract employee, officer and board members are required to have background clearances. This was done through adding the qualifiers of (i) alone with, in control of, or supervising one or more children or (ii) involved in the day to day operations of a facility.

- Specifying that volunteers affected by background clearances are volunteers who are alone with children.
- For contract employees and substitute staff from temporary agencies allow the background clearances to be viewed, verified, and copies maintained. Also allow a background clearance to be accepted if it is not dated more than 12 months prior to the date of when the contractor begins providing services at the facility.
- Expand acceptance of background clearances that are not dated more than 90 days to include officers and board members, persons residing in the home, licensees, registrants, and person who signs statement of intent to operate a religious exempt center.
- Allow a person that leaves a facility to take the criminal record report or central registry with him, if the report is dated no more than 90 days.
- Change the period for a leave of absence to be increased from 6 months to 12 months before new background clearances are needed. Expanded absence to include termination of employment.

Fiscal impact: There are no estimates available on how many people these changes will impact.

ASSESSMENT OF REGULATION ON THE INSTITUTION OF THE FAMILY AND FAMILY STABILITY

VAC Number: 22 VAC 40-191-10 et seq.
Regulation Title: Minimum Standards for Background Clearances for Child Welfare Agencies

Strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children.

There is minimal impact on the authority and rights of parents in the education, nurturing, and supervision of their children.

If the children are cared for by a child welfare agency that is licensed, approved, registered or is religious exempt center, the children will be supervised and managed by staff that are required to have criminal record and child abuse and neglect clearances. However, the clearance for expanded barrier crimes and child abuse and neglect founded complaints only applies to persons hired, volunteering, licensed, approved, registered or granted religious exemption after July 1, 1998.

Encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents.

The regulation does not impact the above.

3. Strengthen or erode the marital commitment.

The regulation does not impact the above.

Increase or decrease disposable family income.

The impact to the disposable family income for most families will be non-existent or minimal. The facility or person pays for the cost of background clearances. It is unlikely that facilities will increase fees as most facilities have already been obtaining the child abuse and neglect central registry checks. Requiring central registry clearances became a new requirement to licensed child-placing agencies and religious exempt child day centers effective July 1, 1998. Prior to this date some child-placing agencies by choice already obtained central registry clearances.

There will be some impact on the income of a person who operates a family day home. These are detailed below:

SPECIFICS ON FAMILY DAY HOME PROVIDER IMPACT:

CHANGE: Background clearances for adults residing in homes

Require background clearances for adults, age 18 years and older who reside in a (i) licensed independent foster home or (ii) an adoptive or a foster home approved by a licensed child placing agency.

Providers will incur a new cost of obtaining criminal record reports and child abuse and neglect registry reports for persons that reside in their home that are age 18 years or older.

Fiscal impact: There are approximately 3100 foster and adoptive homes and 4 licensed independent foster homes. There are no statistics on the annual number of approvals of foster and adoptive homes approved by licensed child placing agencies. Approval and licensure are the main point at which the cost of clearances would be incurred. Background clearance are required (i) at initial licensure or approval of a facility, (ii) when a person age 18 or over begins residing in the home, or (iii) a person residing in the home turns age 18. The cost for both clearances is \$20.00.

CHANGE: *Require child abuse and neglect central registry clearance for persons age 14 years and older residing in a licensed, registered, and approved family day homes.*

Added requiring child abuse and neglect central registry clearances reports for persons age 14 years and older who reside in a licensed family day home. This was done to be consistent with Minimum Standards for Licensed Family Day Homes that already require the central registry clearance. This regulation was expanded to include the other types of family day homes, which are the voluntarily registered family day homes and family day homes approved by licensed systems.

Fiscal impact: There is no fiscal impact for licensed family day homes as these homes have been obtaining the clearance. There are 1033 voluntarily registered homes and 625 family day homes approved by licensed systems. Voluntarily registered homes must obtain background clearances, including the child abuse and neglect central registry clearance, every two years at their renewal application. Family day homes approved by licensed family day systems will have to obtain the central registry clearance mainly at the point of approval. Additional clearances will be required (i) when a person age 14 or over begins residing in the home or (ii) a person residing in the home becomes age 14. The cost per person is \$5.00.

Department of Social Services
Minimum Standards for Background Clearances for Child Welfare Agencies
22 VAC 40-191-10 et seq.

Summary: The regulation establishes background clearances for criminal convictions and founded complaints of child abuse and neglect for child welfare agencies. It prohibits the licensing, approval, registration, and exemption of facilities when designated persons associated with the facility have certain criminal convictions or have ever been the subject of a founded complaint of child abuse or neglect. Facilities are prohibited from using a person for certain roles if the person has certain criminal convictions or has ever been the subject of a founded complaint of child abuse or neglect.

Licensed child day centers and licensed child day center systems are not included in this regulation.

The Regulation for Criminal Record Checks for Child Welfare Agencies, 22 VAC 40-190-10 et seq. is being repealed. The revisions required to amend 22 VAC 40-190-10 et seq. were so extensive that it is more efficient to repeal the existing regulation and promulgate a new regulation. The proposed new regulation incorporates significant *Code of Virginia* changes mandated by the 1998 General Assembly amendments, organizational changes requested during public comment, content changes requested during public comment, and clarifications.

Department of Social Services
Minimum Standards for Background Clearances for Child Welfare Agencies
22 VAC 40-191-10 et seq.

Statutory Authority: §§ 63.1-198 through 63.1-199 of the *Code of Virginia*

Basis: The State Board of Social Services has the statutory authority to promulgate this regulation based on *Code of Virginia* sections 63.1-25. The State Board is authorized to regulate the following §§ 63.1-198; 63.1-198.1; 63.1-198.2; 63.1-198.3; 63.1-198.4 and 63.1-199 of the *Code of Virginia*. These *Code* sections establish background clearances for criminal convictions and founded complaints of child abuse or neglect and set prohibitions if a person is found to have certain criminal convictions or has ever been the subject of a founded complaint of child abuse or neglect.

Section 63.1-198 applies to applicants for licensure and registration. Section 63.1-199 applies to denying or approving applicants. Section 63.1-198.1 applies to employees and volunteers of child welfare agencies. It also applies to caretakers approved by family day care, all adults living in the family day home, and those individuals approved by child-placing agencies as foster or adoptive parents. Section 63.1-198.2 applies to persons employed by, volunteering for, or who are officially involved in the day-to-day operations of a religious exempt center. Section 63.1-198.3 applies to persons who reside in a family day home.

Section 63.1-198.4 establishes a waiver for any person who seeks to operate, volunteer or work at a child welfare agency who is disqualified because of a conviction in his criminal record review. The waiver can not be granted for certain barrier crimes.

Purpose: The *Code of Virginia* mandates background clearances for criminal convictions and founded complaints of child abuse or neglect for child welfare agencies. The *Code* prohibits operating, volunteering, or working at a child welfare agency for persons who have certain convictions or a founded complaint of abuse or neglect. This is to protect children who are in the care of child welfare agencies. Persons with convictions involving crimes against minors, violence and sex offenses, or with a founded complaint of child abuse or neglect may endanger and harm children.

The agency has decided to promulgate a new regulation titled Minimum Standards for Background Clearances for Child Welfare Agencies, 22 VAC 40-191-10 et seq. for the following reasons:

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- The proposed new regulation incorporates organizational changes requested during public comment, content changes requested during public comment, and clarifications.

Substance: A summary of the substantive changes follow:

The Minimum Standards for Background Clearances for Child Welfare Agencies, 22 VAC 40-191-10 et seq. incorporates the substantive changes listed below.

B. The following changes that were mandated by the 1998 General Assembly and became effective July 1, 1998.

1. Expanding barrier crimes;
2. Including prior adult convictions and juvenile convictions and adjudications of delinquency as part of the barrier crimes;
3. Mandating child abuse and neglect central registry checks be conducted on required persons;

NOTE: Requiring central registry checks was added to the criminal record sections of the *Code* for child welfare agencies effective July 1, 1998. Requiring central registry reports is new for staff of child-placing agencies. However, many child-placing agencies choose to obtain central registry reports on staff. Central registry reports for staff of religious exempt child day centers is new. However, the majority of facilities addressed in Chapter 191 were required prior to July 1, 1998 to have central registry checks by the regulations that exist for the facility. Below are facilities that have been required prior to July 1, 1998 to have central registry checks.

Facility and regulation

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Minimum Standards for Licensed Family Day Homes

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Minimum Standards for Licensed Family Day-Care Systems

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Minimum Standards for Background Clearances for Child Welfare Agencies
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Licensed family day systems
Minimum Standards for Licensed Family Day-Care Systems

Voluntarily registered family day homes
Voluntary Registration of Family Day Homes, Requirement for Providers

Foster and adoptive homes approved by child-placing agencies
Minimum Standards for Licensed Child-Placing Agencies

Licensed independent foster homes
Minimum Standards for Licensed Independent Foster Homes

4. Adding a founded complaint of child abuse or neglect as a prohibition to licensure, registration, approval, employment, volunteering, or for certain officers and board members;
 5. Adding a founded complaint of child abuse or neglect as a prohibition to operating or residing in a family day home;
 6. Requiring that if an applicant is denied approval or employment due to a founded complaint of child abuse or neglect that the person be given a copy of the report;
 7. Expanding of prohibitions to be included in a sworn disclosure statement;
 8. Including that religious exempt child day centers should be included in the regulation; and
 9. Establishing a waiver request for being disqualified due a child abuse or neglect founded complaint or felony conviction within the last five years with the restriction that certain convictions can not be waived.
- C. The Child Day-Care Council approved the below items for the Minimum Standards for Background Clearances for Licensed Child Day Centers, 22 VAC 15-051-10 et seq. These items have been incorporated into the regulation for child welfare agencies.
1. Have a separate regulation for licensed child day centers.
 2. Change the regulation name to **Background Clearances**. This makes referencing the regulation easier and more readable.
 3. Where possible, reorganize the document so the sworn disclosure statement, criminal record report, and Child Abuse and Neglect Central

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Registry report do not duplicate the same statements and make the document longer.

4. Add definitions for barrier crimes, central registry report, child abuse/neglect history record request, child abuse and neglect registry, child welfare agency, commissioner, contract agency, contract employee, department, disqualifying background, involved in day-to-day operations, and licensed.
5. Modify definition for applicant for licensure, barrier crimes, central criminal records exchange and sworn disclosure statement and remove definition for officer of the board.
6. Clarify which employees, contract employees and officers and board members are affected by background clearances. This has been done through the definitions of an employee, contract employee, officer of the board and involved in the day-to-day operations of the facility. Employees, contract employees and board members that are affected by background clearances are ones that are (i) alone with, in control of or supervising one or more children or (ii) involved in the day to day operations of a facility.

“Involved in the day-to-day operations of the center” means being:

(i) in a supervisory or management position, making daily decisions regarding the operation of the facility or (ii) counted by the facility for purposes of staff-to-children ratios.

7. Include contract employees for background clearances when the agreement is with the parent but the service is being delivered to the child at the facility. Also clarify that contract employees affected by background clearances are those contract employees that provide services to a child or children. A definition of contract employee has been added to the definitions.
8. The center shall not be penalized if the center has submitted the criminal history record request and child abuse/neglect history record request within seven days of persons being employed or volunteering.
9. For contract employees and substitute staff from temporary agencies allow for the background clearances to be viewed, verified, and copies maintained.
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months prior to the date of when the contractor begins providing services at the facility.

11. If the Department becomes aware that a person has a disqualifying background; the department shall be permitted to release this information to the facilities that have a legitimate interest.
12. Require a copy, not an original, of the central registry report. Only a copy is required by *Code* and provides the same flexibility as the copy of a criminal record report.
13. Change wording on verifying of background clearances to be “the facility designee shall be charged with knowledge of all information in the clearance.”
14. If an individual leaves the facility and the criminal record report is 90 days old or less, allow the individual to take the original. The center is to keep a copy, with a statement that it is a photocopy of an original that the facility verified. The regulation should still require that the original criminal record report be obtained and filed at the location of the facility where the person is currently working or volunteering.
15. Allow a criminal record report and a central registry check to remain valid as long as the period of separation does not exceed 12 consecutive months. Facilities would not incur the cost of new checks for employees used in the summer such as college students. This would aid centers such as Parks and Recreation and summer programs that employ students for the summer. This would be a cost-effective change.
16. Allow copies of the criminal record report to be maintained at a non-primary place of work. If a person works at multiple facilities, he will not have to obtain multiple original criminal record reports. The copy of the criminal record report must carry statement that the center designee has viewed and verified the original.
17. Not require the sworn disclosure statement to be attached to the criminal record report and central registry report. Add same retention requirements as the criminal record report and central registry report. Including the Sworn disclosure statement as a background clearance accomplished this.

D. The below department recommendations:

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1. Clarify terms by adding definitions for applicant for approval, approved, child welfare agency, department representative, good character and reputation, other person or persons officially involved in the operations of religious exempt center, registered, religious exempt center, and sex offense felony for family day home and modifying definition of facility.
2. Comply with Requirements for Providers for Voluntarily Registered Family Day Homes that require background clearances for provider assistants. Provider assistant in a family day home was added to the definition of employee in 22 VAC 40-191-10.
3. Reference that Licensed Child Day Care Systems requirements are in 22 VAC 15-051-10 et seq.
4. Comply with § 63.1-198.1 for the *Code of Virginia* that states that the provision of this section of the *Code* shall apply only to volunteers who will be alone with any child in the performance of their duties. The volunteer definition in 22 VAC 40-191-10 has been written to state this.
5. Provide a list of persons affected by background clearances.
6. Provide a list of facilities subject to background clearances.
7. Maintain the safety of children in care by requiring adults, age 18 years and older, who reside in a (i) licensed independent foster home or (ii) an adoptive or a foster home approved by a licensed child placing agency to obtain background clearances.
8. Comply with Minimum Standards for Licensed Family Day Homes that require persons age 14 years and older to have central registry checks. This regulation was expanded to include the other types of family day homes, voluntarily registered family day homes and family day homes approved by family day systems. This change complies with § 63.1-198.3 of the *Code of Virginia*. This section states it shall be unlawful for any person to operate a family day home if he, or if he knows that any other person who resides in the home, has been convicted of specified sex offense felonies or is the subject of a founded complaint of child abuse or neglect.
9. Comply with § 63.1-198, which requires background clearances prior to a person assuming board duties. In the repealed regulation, this had been 21 days.

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10. Inform the person that a background clearance is being done. The Child Day-Care Council approved this for the Minimum Standards for Background Clearances for Licensed Child Day Centers.
11. Expand the acceptance of background clearances that are not dated more than 90 days to include officers and board members, persons residing in the home, licensees, registrants, and person who signs statement of intent to operate a religious exempt center.

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Issues:

General Issues

Issue 1: Title has changed

The title of repealed Chapter 190 was Regulation for Criminal Record Checks for Child Welfare Agencies. The Chapter 191 is titled Minimum Standards for Background Clearances for Child Welfare Agencies. The Code has been revised to include Child Abuse/Neglect Registry checks. To expand the title to Regulation for Criminal Record and Child Abuse/Neglect Registry Checks for Child Welfare Agencies would be too cumbersome. Minimum Standards was added to the title so the public would know that these are minimum requirements.

Advantages and Disadvantages: The title is shorter when referring to the regulation. Providers will know that these are minimum requirements. The Child Day-Care Council supports the change for centers. Disadvantage is facilities and state staff affected by this regulation will have to adjust to a new name.

Issue 2: Flow of document has changed

The flow of document has changed. Repealed Chapter 190 was by type of report required. Chapter 191 outlines background clearance by provider flow.

Advantages and Disadvantages: Organizing the Chapter by background clearance report would have created duplication of wording, as most requirements are the same for the three background clearances. The Child-Day Care Council committee recommended that the Chapter be reorganized so the sworn disclosure statement, criminal record, and central registry do not duplicate the same statements. Persons who have reviewed the Chapter prefer the new flow. Disadvantage is that persons who use the Chapter will have to adjust to a new flow.

Repealed Chapter 190		Propose Chapter 191	
Part I	Definitions	Part I	Introduction (includes definitions)
Part II	The Sworn Disclosure Statement	Part II	Persons Affected by Background Clearances
Part III	The Criminal Record Report	Part III	Background Clearances at Initial Application
-	General Requirements	Part IV	Background Clearances After Licensure, Registration or Approval

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adding provider assistant in a family day home as an employee. Below is information on each of these changes.

1. Changing the employees affected

Explanation of Change

In Chapter 190, “employee” means all personnel hired at a facility regardless of role, service, age, function, or duration of employment at the facility.”

In Chapter 191, employee means a person hired by a facility. A qualifier is used in the Chapter 191 stating that background clearances only apply to employees who are:

(i) Alone with, in control of, or supervising one or more children or (ii) involved in the day to day operations of a facility.

“Involved in the day to day operations of a facility” means being:

1. in a supervisory or management position which makes daily decisions regarding the operation of the facility
2. counted by the facility for purposes of staff-to-children ratios;
3. a person who provides casework services for a child placing agency; or
4. a home visitor employed by a licensed family day system.

See

22 VAC 40-191-40 A 4 a

22 VAC 40-191-50 B

22 VAC 40-191-60 B 1

Below are examples of the type of employees that would no longer be required to have clearances unless they meet the criteria of (i) alone with, in control of, or supervising one or more children or (ii) involved in the day to day operations of a facility.

- . A janitor or cook that works at a facility;
- . A person employed for a specialty service such as providing music lessons;
- . A secretary at a licensed child-placing agency;

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- . An account clerk working for a licensed family day system.

Advantage

Clarifies which employees are affected by background clearances. Reduces confusion and questions from providers and state licensing inspectors on which employees require background clearances. Eliminates the cost of \$20.00 per individual to providers of obtaining background clearances on certain limited number of employees.

Disadvantage

Not every person that is hired by a facility will be required to have background clearance.

2. Separating and changing the contract employee definition

Explanation of Change

Contract employees have been taken out of the definition of employee. Three changes have occurred to the substantive definition of contract employee. These are:

- a. In chapter 191 , contract employees has been given the same qualifier as employees:

(i) Alone with, in control of, or supervising one or more children or (ii) involved in the day to day operations of a facility.

See

22 VAC 40-191-40 A 4 b

22 VAC 40-191-50 B

22 VAC 40-191-60 B 2

- b. The scope of the contract employee has been narrowed to contract employees that provide services to a child or children.
- c. The scope has been broadened to include a person or person working for contract agency with which the parent has an agreement to provide services to a child or children at the facility.

Advantage

- a. *Clarifies which contract employees are affected by background clearances. Reduce confusion and questions from providers and state licensing inspectors on which employees require background clearances.*

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- b. Eliminates the \$20.00 background clearance expense per individual to providers for contract staff who are not providing services to a child or children. This would eliminate requiring background clearances on a contract staff such as an electrician, gardener, or secretary or any staff that would not be working with the children.*
- c. A parent sometimes will make an agreement for a person to come to the facility and provide a service such as speech therapy, gymnastics, and music to his child. This allows for a facility to require a background clearance for this person if the person will be alone with, in control of, or supervising one or more children while at the facility. This assures clearances have been done on a person alone with a child or children.*

Disadvantage

Of a and b not every person that is hired by a facility will be required to have background clearance.

Of c requires additional background clearance, and the facility or person having the background clearance would incur the cost.

- 3. Adding to the definition of an employee, a provider assistant in a family day home

Explanation of Change

Provider assistant in a family day home was added to the definition of employee.

Advantage

For Chapter 191, to be consistent with Requirements for Providers for Voluntarily Registered Family Day Homes that require background clearances for provider assistants.

Disadvantage

None, this requirement already exists.

Issue 6: Officer of the board definition

This definition is no longer in Chapter 191. Chapter 191 uses officer and board members with the qualifier (i) alone with, in control of, or supervising one or more children or (ii) involved in the day to day operations of a facility or officers and board members. See 22 VAC 40-191-40 A 4, 22 VAC 40-191-50 B and 22 VAC 40-191-60 B 3.

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Advantages and Disadvantages: Clarifies the conditions under which a board member shall have background clearances. Clarifies that background clearances are required if an officer is directly involved in the day to day operations of a facility. There are no disadvantages.

Issue 7: Volunteer definition

In Chapter 191, a volunteer is a person who provides services without pay and who is alone with children in performance of his duties. In the repealed Chapter 190, it was a volunteer alone with, in control of, or supervising one or more children outside the presence of paid facility staff.

Advantages and Disadvantages: Complies with § 63.1-198.1 of the Code of Virginia that states that the provision of this section of the Code shall apply only to volunteers who will be alone with any child in the performance of their duties. There are no disadvantages.

22 VAC 40-191-20. Licensed child day center systems.

Issue 8: Added licensed child day center systems

The Child Day-Care Council and the State Board promulgate the regulations for systems. This references that the licensed child day center systems are set forth in 22 VAC 15-051-10 et seq. Currently no licensed child day center systems exist.

Advantages and Disadvantages: Explains where to find regulations for licensed child day center systems and does not duplicate information. No disadvantages identified.

22 VAC 40-191-30. Barrier crimes specified.

Issue 9: Expansion of barrier crimes was so extensive and it was clearer to list the crimes in a separate section

Advantages and Disadvantages: Provides a list of barrier crime and complies with the expansion of convictions mandated by the 1998 Code changes.

PART II 22 VAC 40-191-40. Persons affected by background clearances.

Issue 10: Background Clearances for adults residing in homes

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Require background clearances for adults, age 18 years and older who reside in a (i) licensed independent foster home or (ii) an adoptive or a foster home approved by a licensed child placing agency. See 22 VAC 40-191-40 A 6, 22 VAC 40-191-50 B and 22 VAC 40-191-60 D.

Advantages and Disadvantages: Maintaining the safety of children. The disadvantage is providers will incur a new cost of obtaining criminal record reports and central registry reports for persons that reside in their homes that are age 18 years or older. The cost is \$15.00 for a criminal record report and \$5.00 for a central registry report per person.

Issue 11: Background clearances persons 14 years and older residing in a licensed family day home

Added requiring central registry checks for persons age 14 years and older who reside in a licensed family day home. See 22 VAC 40-191-40 B, 22 VAC 40-191-50 B and 22 VAC 40-191-60 E. This regulation was expanded to include the other types of family day homes, voluntarily registered family day homes, and family day homes approved by licensed systems.

Advantages and Disadvantages: Complies with Minimum Standards for Licensed Family Day Homes that require persons age 14 years and older to have central registry checks. Creates consistency for all regulated family day homes by requiring the same requirement for voluntarily registered family day homes and family day homes approved by licensed family day systems. There is no fiscal impact for licensed family day homes as these homes have been obtaining the clearance. Voluntarily registered homes must obtain background clearances, including the child abuse and neglect central registry clearance, every two years at their renewal application. Family day homes approved by licensed family day systems will have to obtain the central registry clearance mainly at the point of approval. Additional clearances will be required (i) when a person age 14 or over begins residing in the home or (ii) a person residing in the home becomes age 14. The cost per person is \$5.00.

PART III 22 VAC 40-191-50. Background clearances at initial application for licensure, registration or approval.

Issue 12: 22 VAC 40-191-50 A Lists facilities affected.

Advantages and Disadvantages: The list easily identifies if a facility is affected by this regulation. It is a duplicate of what is in the definition of facility.

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Issue 13: Require central registry report

Require central registry report, as a background clearance required at initial application for licensure, registration or approval. See 22 VAC 40-191-60B 3.

Advantages and Disadvantages: Complying with 1998 Code changes mandating child abuse and neglect central registry reports. Disadvantage will be the cost of \$5.00 per person to the facility or to the person obtaining the clearance. The majority of facilities have been obtaining central registry checks prior to July 1, 1998, as the facility regulation required this. Requiring central registry checks became a new cost to licensed child-placing agencies and religious exempt child day centers effective July 1, 1998. Some child-placing agencies by choice already obtain central registry clearances.

Issue 14: Added that the facility or department shall inform the person that background clearances are being done. See 22 VAC 40-191-50 C.

Advantages and Disadvantages: Person being screened will know that a criminal record check is being done. The person may not know that a criminal history has been requested, as the person is not required to sign the request form. No disadvantages known.

Issue 15: Added that the facility shall not be penalized if the center has submitted the criminal history request report and child abuse/neglect history request within seven days of person's being employed or volunteering. See 22 VAC 40-191-50 D.

Advantages and Disadvantages: Preventing facilities from being penalized if they have requested clearances. Background clearances are not always being processed by the state within 21 days.

Issue 16: Added applicant for family day homes shall state on the sworn disclosure if he has been convicted of a sex offense felony or is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth or if he knows that any other person, regardless of age, who resides in the house has been convicted of a sex offense felony or is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth. See 22 VAC 40-191-50 F.

Advantages and Disadvantages: Providing additional protection for children through a statement from family home providers that they are in compliance with § 63.1-198.3. None as there is no cost and the provider must already complete the statement. This will just be an additional question on the statement.

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PART IV. 22 VAC 40-191-60. Background clearances after initial application for licensure, registration or approval.

Issue 17: Changed when officers and board members are required to obtain clearances. Changed from 21 days to obtain the criminal record report when the board member assumes the position to prior to assuming position. See 22 VAC 40-191-60 B.

Advantages and Disadvantages: Complies with § 63.1-198, which requires background clearances prior to a person's assuming board duties.

Issue 18: For contract employees and substitute staff from temporary agencies allow for the background clearances to be viewed, verified, and copies maintained. Also allow a background clearance to be accepted if it is not dated more than 12 months prior to the date of when the contractor begins providing services at the facility. See 22 VAC 40-191-60 C.

Advantages and Disadvantages: A facility or individual will not having to incur costs of obtaining additional clearances. The facility verifying the clearances rather than the agency assures the facility has seen that there is no disqualifying background on the reports. If a person is a sole contractor, it is critical that a person other than the contractor is verifying the clearances.

Allows a contractor to serve more facilities without incurring additional background clearance costs. If a contractor serves multiple facilities, then each time he begins serving a new facility within a year of obtaining background clearances, he is not required to obtain new clearances. A contractor serving multiple facilities usually occurs when a contractor provides a specialty service such a gym classes, computer classes, music lessons, tutoring, etc.

Issue 19: Changed voluntarily registered family day homes shall obtain background clearances prior to each renewal of registration rather than every two years. These clearances shall be included with their application for renewal. See 22 VAC 40-191-60 F.

Advantages and Disadvantages: This is consistent with voluntarily registered family day home regulations. No disadvantage, as this is already in regulations for voluntarily registered family day homes.

Issue 20: If the person or persons designated as the applicant; licensee; approved individual or individuals; or registrant or registrants changes, the facility shall obtain

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background clearances on the new designated person or persons. See 22 VAC 40-191-60G.

Advantages and Disadvantages: This above been required by repealed Chapter 190, but it is clearly stated in this regulation.

PART V. 22 VAC 40-191-70. Consequences associated with background clearances.

Issue 21: This section added to specify the consequences of having a disqualifying background. Also added that the facility shall provide a person with information appearing on the background clearance if there is a denial of approval or employment due to a disqualifying background.

Advantages and Disadvantages: Complies with Code §§ 63.1-198 through §63.1-199 of the Code of Virginia.

PART VI, 22 VAC 40-191-80. Background clearances for religious exempt centers.

Issue 22: Required background clearances for religious exempt child day centers

Background clearances are included in Chapter 191 regulation and are required to obtain central registry clearances.

Advantages and Disadvantages: Establishes regulations that comply with § 63.1-198. 2 of the Code of Virginia and establishes consistent regulations for verifying, duration and maintenance of background clearances among all regulated facilities. Disadvantage is July 1, 1998 the center or persons requiring a central registry clearance incur the \$5.00 cost of obtaining the clearance.

PART VII. 22-VAC-191-90. Verifying background clearances.

Issue 23: Expand acceptance of background clearances that are not dated more than 90 days to include officers and board members, persons residing in the home, licensees, registrants, and person who signs statement of intent to operate a religious exempt center. See 22 VAC 191-90 B and C.

Advantages and Disadvantages: Reducing costs by not requiring a new clearance if one is recent. Facility and department will not know if a disqualifying background occurred within the last 90 days.

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Issue 24: Change wording on verifying of background clearances to be “the facility designee shall be charged with knowledge of all information in the clearance.”
See 22 VAC 191-90 E.

Advantages and Disadvantages: Concise wording covering review of background clearances. Regulation does not specify what is to be verified or how to determine that clearance is for the correct person. Facility designee is too broad, which means that a person other than the administrator or management staff could be designated.

PART VIII, 22 VAC 40-191-100. Duration of background clearances.

Issue 25: Allow a person that leaves a facility to take clearances

Allow a person that leaves a facility and the criminal record report or central registry report is 90 days old or less, the person may take the report or reports with him.
See 22 VAC-191-100 A.

Advantages and Disadvantages: This keeps the new facility from having to incur the cost of obtaining a new clearance when a valid one is still available. Disadvantage is the original facility will no longer have an original criminal record report on file but will have a statement that the copy is of a verified original.

Issue 26: Leave of absence period to 12 months

Change the period for a leave of absence to be increased from 6 months to 12 months before new background clearances are needed. Expanded absence to include termination of employment. See 22 VAC 40-191-100 B.

Advantages and Disadvantages: This reduces the cost to facilities of having to get clearances on employees/volunteers that are gone 12 months or less. This would aid centers such as Parks and Recreation and summer programs that employ students for the summer. This would be a cost-effective change. The Child-Day Care Council recommended this. Disadvantage is that the person may have had acquired disqualifying background during the additional six months.

Part IX. 22 VAC 40-191-110. Maintenance of background clearances.

Issue 27: Maintain copy of verified original criminal record report

Allows that if a person works at more than one facility, a facility may keep a copy of the criminal record report with a statement that it has been verified from an original report.
See 22 VAC 40-191-110C.

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Advantage and Disadvantage: This eliminates the cost of facilities having to get duplicate criminal record reports and central registry reports when a person is working for more than one facility at the same time. Disadvantage is that one facility will have to maintain a copy of a criminal record report verified from the original instead of an original criminal record report.

Part X. 22 VAC 40-191-120 through 170. The waiver.

Issue 28: Establishes a waiver request when a person is disqualified due to a child abuse or neglect founded complaint or felony conviction within the last five years. There is a restriction that certain convictions can not be waived.

Advantage and Disadvantage: Complies Code of Virginia § 63.1-198.4.

Estimated impacts: The regulation provides for clearances required by *Code*. Regulation changes have minimized a facility or person having to obtain duplicate clearances.

The fees collected offset the cost to State Police of processing criminal record clearances. The fees collected offset the cost to the Department of Social Services for processing central registry reports.

Local departments of social services are not affected by this regulation.

The background clearances are the responsibility of the facility. Licensing inspectors confirm additional background clearances have been obtained as part of the licensing and registration approval process or during inspection visits.

It is the staff at these facilities that are required to have background clearances. Either the facility or the person having the background clearance done would incur the costs. The cost of the State Police criminal record clearance is \$15.00 and the cost of the child abuse and neglect central registry clearance is \$5.00

Although there are approximately 7,569 facilities regulated by this Chapter, the background clearances are not new for most facilities.

Listed below are changes that have fiscal impact. The fiscal impacts show the number of facilities affected and the costs per person. There are no figures available on the number of persons impacted.

- **CHANGE:** Require child abuse and neglect central registry clearance at initial application for licensure, registration, approval, and exemption.

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The child abuse and neglect central registry report, as a background clearance, is required at initial application for licensure, registration, approval, or exemption.

This is to comply with 1998 Code changes mandating child abuse and neglect central registry reports. The majority of facilities have been obtaining central registry clearances prior to July 1, 1998, as the facility regulation required this. Central registry clearances became a requirement for licensed child-placing agencies and religious exempt child day centers effective July 1, 1998. Prior to this date, some child-placing agencies chose to obtain central registry clearances.

Fiscal impact: It is estimated that annually there are three new licensed child-placing agencies and 37 new religious exempt centers. Cost per person is \$5.00.

- **CHANGE:** Require child abuse and neglect central registry clearance when a facility hires an employee or has a volunteer begin service.

This is to comply with 1998 Code changes mandating child abuse and neglect central registry reports. The majority of facilities have been obtaining central registry clearances prior to July 1, 1998, as the facility regulation required this. Requiring central registry clearances became a new requirement to licensed child-placing agencies and religious exempt child day centers effective July 1, 1998. Prior to this date, some child-placing agencies chose to obtain central registry clearances.

Fiscal impact: There are approximately 62 licensed child-placing agencies and 816 religious exempt centers. There is no estimate on the number of new employees or volunteers that begin work annually with these facilities. The facilities have been required to obtain the clearances since July 1, 1998. Cost per person is \$5.00.

- **CHANGE:** Background clearances for adults residing in homes

Require background clearances for adults, age 18 years and older who reside in a (i) licensed independent foster home or (ii) an adoptive or a foster home approved by a licensed child placing agency.

Providers will incur a new cost of obtaining criminal record reports and child abuse and neglect registry reports for persons that reside in their home that are age 18 years or older.

Fiscal impact: There are approximately 3100 foster and adoptive homes and 4 licensed independent foster homes. There are no statistics on the annual number of approvals of foster and adoptive homes approved by licensed child placing

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agencies. Approval and licensure are the main point at which the cost of clearances would be incurred. Background clearances are required (i) at initial licensure or approval of a facility, (ii) when a person age 18 or over begins residing in the home, or (iii) a person residing in the home turns age 18. The cost for both clearances is \$20.00.

- **CHANGE:** Require child abuse and neglect central registry clearance for persons age 14 years and older residing in a licensed, registered, and approved family day homes.

Added requiring child abuse and neglect central registry clearances reports for persons age 14 years and older who reside in a licensed family day home. This was done to be consistent with Minimum Standards for Licensed Family Day Homes that already require the central registry clearance. This regulation was expanded to include the other types of family day homes, which are the voluntarily registered family day homes and family day homes approved by licensed systems.

Fiscal impact: There is no fiscal impact for licensed family day homes as these homes have been obtaining the clearance. There are 1033 voluntarily registered homes and 625 family day homes approved by licensed systems. Voluntarily registered homes must obtain background clearances, including the child abuse and neglect central registry clearance, every two years at their renewal application. Family day homes approved by licensed family day systems will have to obtain the central registry clearance mainly at the point of approval. Additional clearances will be required (i) when a person age 14 or over begins residing in the home or (ii) a person residing in the home becomes age 14. The cost per person is \$5.00.

- **CHANGE:** There are several changes that will slightly reduce the number or background clearances. These are:
 - Defining which employees, contract employee, officer and board members are required to have background clearances. This was done through adding the qualifiers of (i) alone with, in control of, or supervising one or more children or (ii) involved in the day to day operations of a facility.
 - Specifying that volunteers affected by background clearances are volunteers who are alone with children.

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- For contract employees and substitute staff from temporary agencies allow the background clearances to be viewed, verified, and copies maintained. Also allow a background clearance to be accepted if it is not dated more than 12 months prior to the date of when the contractor begins providing services at the facility.
- Expand acceptance of background clearances that are not dated more than 90 days to include officers and board members, persons residing in the home, licensees, registrants, and person who signs statement of intent to operate a religious exempt center.
- Allow a person that leaves a facility to take the criminal record report or central registry with him, if the report is dated no more than 90 days.
- Change the period for a leave of absence to be increased from 6 months to 12 months before new background clearances are needed. Expanded absence to include termination of employment.

Fiscal impact: There are no estimates available on how many people these changes will impact.

Regulation Fiscal Impact Analysis

VAC NUMBER: 22 VAC 40-191-10 ET. SEQ.
REGULATION TITLE: Minimum Standards for BACKGROUND CLEARANCES FOR CHILD WELFARE AGENCIES

BRIEF SUMMARY OF REGULATION/CHANGE

This proposed regulation applies to child welfare agencies regulated by the Division of Licensing Programs. Attachment I lists the facilities that are affected by this regulation.

The regulation establishes background clearances on criminal convictions and founded complaints of child abuse and neglect. It also establishes prohibitions for licensure, approvals, and registrations of child welfare agencies and the granting of religious exempt status. Employees, contract employees, and volunteers and designated board members are prohibited from assuming or maintaining their role if the person has a disqualifying background. Licensed child day centers and licensed child day center systems are not included in this regulation.

The department has decided to promulgate a new regulation titled Regulation for Background Clearances for Child Welfare Agencies, 22 VAC 40-191-10 et seq. for the following reasons:

- *Significant changes to the Code of Virginia were mandated by the 1998 General Assembly.*
- *An emergency regulation, Regulation for Criminal Record and Child Abuse/Neglect Registry Checks for Child Welfare Agencies, was promulgated to address the Code changes. This regulation became effective May 19, 1999 and will expire May 18, 2000.*
- *The revisions required to amend 22 VAC 40-190-10 et seq. were so extensive it is more efficient to repeal the existing regulation and promulgate a new regulation. Regulation for Criminal Record Checks for Child Welfare Agencies, 22 VAC 40-190-10 et seq. is being repealed.*
- *The proposed new regulation incorporates organizational and content changes requested during public comment as well as content changes requested during public comment and clarifications.*

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Basis for regulation

State Board has the statutory authority to promulgate this regulation based on Code of Virginia sections 63.1-25; 63.1-198; 63.1-198.1; 63.1-198.2; 63.1-198.3; 63.1-198.4 and 63.1-199.

Estimated Impact on Customers/Recipients

The proposed regulation provides assurances to families that persons caring for children at the regulated facilities have obtained background clearances from the State Police Central Criminal Record Exchange and from the Department of Social Services Child Abuse and Neglect Central Registry. There is no fiscal impact on families.

**ESTIMATED IMPACT ON LOCAL DEPARTMENTS OF SOCIAL SERVICES'
OPERATIONS**

None

ESTIMATED IMPACT ON VDSS' OPERATIONS

One of the background clearances required is a search of the Child Abuse and Neglect Central Registry to determine if a person is the subject of a founded complaint. The Department of Social Services staff processed the central registry clearances. There is a \$5.00 fee collected for the clearance, which is used to fund the cost of searches.

The providers are responsible for requesting background clearances. Licensing inspectors confirm that background clearances have been obtained as part of the licensing or registration approval process or during inspection visits.

Estimated Impact on Providers/Other Stakeholders

There are 7,569 facilities affected by this regulation. It is the staff at these facilities that are required to have background clearances. Either the facility or the person having the background clearance done would incur the costs. The cost of the State Police criminal record clearance is \$15.00 and the cost of the child abuse and neglect central registry clearance is \$5.00. Attachment I lists which persons are subject to background clearances.

The child abuse and central registry clearance is not new for most facilities. *Code of Virginia* §§ 63.1-198, 63.1-198.1, 63.1-198.2, 63.1-198.3, and 63.1-199 were revised to require central registry checks for child abuse and neglect and established prohibitions for persons who are a subject of a founded complaint of child abuse or neglect. Therefore, the new proposed Chapter 191 includes these mandates that were

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not included in the repealed Chapter 190. However, requiring central registry checks for the majority of facilities addressed in Chapter 191 is not new. The below facilities were required to have central registry checks prior to July 1, 1998 by the regulations that exist for the facility.

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<u>Facility</u>	<u>Regulation Name</u>
Licensed family day homes	Minimum Standards for Licensed Family Day Homes
Family day homes approved by family day systems	Minimum Standards for Licensed Family Day-Care Systems
Licensed family day systems	Minimum Standards for Licensed Family Day-Care Systems
Voluntarily registered family day homes	Voluntary Registration of Family Day Homes, Requirement for Providers
Foster and adoptive homes approved by child-placing agencies	Minimum Standards for Licensed Child-Placing Agencies
Licensed independent foster homes	Minimum Standards for Licensed Independent Foster Homes

Requiring central registry reports became new for staff of child-placing agencies effective July 1, 1998. However prior to this, many child-placing agencies chose to obtain central registry reports on staff. Central registry reports for staff of religious exempt child day centers are new.

The State Police will be impacted to a certain extent but the \$15.00 charge should cover the cost of clearances.

Listed below are changes that have fiscal impact. The fiscal impacts show the number of facilities affected and the costs per person. There are no figures available on the number of persons impacted.

- **CHANGE: REQUIRE CHILD ABUSE AND NEGLECT CENTRAL REGISTRY CLEARANCE AT INITIAL APPLICATION FOR LICENSURE, REGISTRATION, APPROVAL, AND EXEMPTION.**

THE CHILD ABUSE AND NEGLECT CENTRAL REGISTRY REPORT, AS A BACKGROUND CLEARANCE, IS REQUIRED AT INITIAL APPLICATION FOR LICENSURE, REGISTRATION, APPROVAL, OR EXEMPTION.

This is to comply with 1998 Code changes mandating child abuse and neglect central registry reports. The majority of facilities have been obtaining central registry clearances prior to July 1, 1998, as the facility regulation required this. Central registry clearances became a requirement for licensed child-placing agencies and religious exempt child day centers effective July 1, 1998. Prior to this date, some child-placing agencies chose to obtain central registry clearances.

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Fiscal impact: It is estimated that annually there are three new licensed child-placing agencies and 37 new religious exempt centers. Cost per person is \$5.00.

- **CHANGE: REQUIRE CHILD ABUSE AND NEGLECT CENTRAL REGISTRY CLEARANCE WHEN A FACILITY HIRES AN EMPLOYEE OR HAS A VOLUNTEER BEGIN SERVICE.**

This is to comply with 1998 Code changes mandating child abuse and neglect central registry reports. The majority of facilities have been obtaining central registry clearances prior to July 1, 1998, as the facility regulation required this. Requiring central registry clearances became a new requirement to licensed child-placing agencies and religious exempt child day centers effective July 1, 1998. Prior to this date, some child-placing agencies chose to obtain central registry clearances.

Fiscal impact: There are approximately 62 licensed child-placing agencies and 816 religious exempt centers. There is no estimate on the number of new employees or volunteers that begin work annually with these facilities. The facilities have been required to obtain the clearances since July 1, 1998. Cost per person is \$5.00.

- **CHANGE:** Background clearances for adults residing in homes

Require background clearances for adults, age 18 years and older who reside in a (i) licensed independent foster home or (ii) an adoptive or a foster home approved by a licensed child placing agency.

Providers will incur a new cost of obtaining criminal record reports and child abuse and neglect registry reports for persons that reside in their home that are age 18 years or older.

Fiscal impact: There are approximately 3100 foster and adoptive homes and 4 licensed independent foster homes. There are no statistics on the annual number of approvals of foster and adoptive homes approved by licensed child placing agencies. Approval and licensure are the main point at which the cost of clearances would be incurred. Background clearance are required (i) at initial licensure or approval of a facility, (ii) when a person age 18 or over begins residing in the home, or (iii) a person residing in the home turns age 18. The cost for both clearances is \$20.00.

- **CHANGE:** *Require child abuse and neglect central registry clearance for persons age 14 years and older residing in a licensed, registered, and approved family day homes.*

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Added requiring child abuse and neglect central registry clearances reports for persons age 14 years and older who reside in a licensed family day home. This was done to be consistent with Minimum Standards for Licensed Family Day Homes that already require the central registry clearance. This regulation was expanded to include the other types of family day homes, which are the voluntarily registered family day homes and family day homes approved by licensed systems.

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Fiscal impact: There is no fiscal impact for licensed family day homes as these homes have been obtaining the clearance. There are 1033 voluntarily registered homes and 625 family day homes approved by licensed systems. Voluntarily registered homes must obtain background clearances, including the child abuse and neglect central registry clearance, every two years at their renewal application. Family day homes approved by licensed family day systems will have to obtain the central registry clearance mainly at the point of approval. Additional clearances will be required (i) when a person age 14 or over begins residing in the home or (ii) a person residing in the home becomes age 14. The cost per person is \$5.00.

- **CHANGE:** There are several changes that will slightly reduce the number or background clearances. These are:
 - Defining which employees, contract employee, officer and board members are required to have background clearances. This was done through adding the qualifiers of (i) alone with, in control of, or supervising one or more children or (ii) involved in the day to day operations of a facility.
 - Specifying that volunteers affected by background clearances are volunteers who are alone with children.
 - For contract employees and substitute staff from temporary agencies allow the background clearances to be viewed, verified, and copies maintained. Also allow a background clearance to be accepted if it is not dated more than 12 months prior to the date of when the contractor begins providing services at the facility.
 - Expand acceptance of background clearances that are not dated more than 90 days to include officers and board members, persons residing in the home, licensees, registrants, and person who signs statement of intent to operate a religious exempt center.
 - Allow a person that leaves a facility to take the criminal record report or central registry with him, if the report is dated no more than 90 days.
 - **CHANGE THE PERIOD FOR A LEAVE OF ABSENCE TO BE INCREASED FROM 6 MONTHS TO 12 MONTHS BEFORE NEW BACKGROUND CLEARANCES ARE NEEDED. EXPANDED ABSENCE TO INCLUDE TERMINATION OF EMPLOYMENT.**

Fiscal impact: There are no estimates available on how many people these changes will impact.

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ESTIMATED FISCAL IMPACTS

Program: 490	<u>SUBPROGRAM: 49005</u>		Item:
	FY 2000	FY 2001	Source of Funding
Local Costs:	\$0	\$0	
State Costs:	\$13,000	\$13,00	Costs of central registry clearances, which are offset by fees.
Federal Costs:	\$0	\$0	
Total Costs:	\$13,000	\$13,000	
	FY 2000	FY 2001	Source of Revenue
Total Revenue:	\$13,000	\$13,000	Fees for central registry clearances

APPROVAL

Approved by State Board of Social Services on: _____ date
Signature: _____ Commissioner _____ date

Notation: Fiscal years based on regulation being effective July 1, 2000.

Based on an increase of 2,600 central registry checks for FY 2000 and 2,600 for FY 2001.

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**ATTACHMENT I
FACILITIES AND PERSONS IMPACTED BY BACKGROUND CLEARANCES**

A. The following facilities are subject to background clearances.

1. Licensed family day homes;
2. Licensed family day systems;
3. Licensed child-placing agencies;
4. Licensed independent foster homes;
5. Voluntarily registered family day homes;
6. Family day homes approved by a family day care system; and
7. Foster and adoptive homes approved by licensed child-placing agencies.

B. PERSONS AFFECTED BY BACKGROUND CLEARANCES.

The following persons associated with the facilities in A. are affected by background clearances.

Background clearances are required for the individuals at the point of licensure, approval or registration. The facility shall obtain background clearances when a person assumes one of the roles below.

1. Applicants for licensure or licensees;
2. Applicants for approval or individual or individuals approved;
3. Applicants for registration as a voluntarily registered family day home or the registrants;
4. Persons who are (i) alone with, in control of, or supervising one or more children, or (ii) involved the day-to-day operations of the facility as:
 - a. Employees;
 - b. Contract employees;
 - c. Officers and board members;
5. Volunteers who are alone with children in the performance of their duties;

EXCEPTION: Parent-volunteers as defined Part I, Definitions, 22 VAC-40-191-10 are not required to have background clearances.

6. Adults, persons age 18 years or older, residing in (i) a licensed family day home; (ii) a voluntarily registered family day home; (iii) a family day home approved by a family day system; (iv) an independent foster home; or (v) an adoptive or foster home approved by a licensed child-placing agency; and;
7. Persons age 14 or over who reside in a (i) licensed family day home or (ii) family day home approved by a family day system are required to have a central registry

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report. No sworn disclosure or criminal record report is required until the person turns age 18.

NOTE: Provider assistants in family day homes are considered employees who are covered in subdivision A 4 of this section.

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MATRIX OF SUBSTANCE AND ISSUES

Overall changes:

- The term person or persons is being used consistently in Chapter 191. Wherever, the term individual or individuals appeared in Chapter 190, it has been changed to person or persons in Chapter 191. As these changes do not alter content, these are not mentioned in item changes.
- §§ 63.1-198, 63.1-198.1, 63.1-198.2, 63.1-198.3, and 63.1-199 were revised to require central registry checks for child abuse and neglect and established prohibitions for persons who are a subject of a founded complaint of child abuse or neglect. Therefore, the new proposed Chapter 191 includes these mandates that were not included in the repealed Chapter 190. However, requiring central registry checks for the majority of facilities addressed in Chapter 191 is not new. The below facilities were required to have central registry checks prior to July 1, 1998 by the regulations that exist for the facility.

Facility

Licensed family day homes

Family day homes approved by family day systems

Licensed family day systems

Voluntarily registered family day homes
Providers

Foster and adoptive homes approved by child-placing agencies

Licensed independent foster homes

Regulation Name

Minimum Standards for Licensed Family Day Homes

Minimum Standards for Licensed Family Day-Care Systems

Minimum Standards for Licensed Family Day-Care Systems

Voluntary Registration of Family Day Homes, Requirement for

Minimum Standards for Licensed Child-Placing Agencies

Minimum Standards for Licensed Independent Foster Homes

Requiring central registry reports is new for staff of child-placing agencies. However, many child-placing agencies chose to obtain central registry reports on staff. Requiring central registry reports for staff of religious exempt child day centers is new.

MATRIX OF SUBSTANCE AND ISSUES

FLOW OF DOCUMENT HAS CHANGED

Repealed Chapter 190	Proposed Chapter 191	Advantage to public and state staff by	Disadvantage to public and state staff by
<p>Part I –Definitions</p> <p>Part II -The Sworn Disclosure Statement</p> <p>Part III - The Criminal Record Report</p> <ul style="list-style-type: none"> - General Requirements - Validity of Report - Maintenance of Report - Requirements for Board Members 	<p>Part I – Introduction</p> <ul style="list-style-type: none"> - Definitions - Licensed child day center systems - Barrier Crimes list <p>Part II – Persons Affected by Background Clearances</p> <p>Part III – Background Clearances at Initial Application</p> <p>Part IV – Background Clearances After Licensure, Registration or Approval</p> <p>Part V –Consequences Associated With Background Clearances</p> <p>Part VI- Background Clearances for Religious Exempt Child Day Centers</p> <p>Part VII- Verifying Background Clearances</p> <p>Part VIII- Duration of Background Clearances</p> <p>Part IX –Maintenance of Background Clearances</p>	<p>Outlining background clearance requirements in terms of provider flow. Continuing an outline by document would have created duplication of wording, as most requirements are the same for all three-background clearances.</p> <p>The Child Day-Care Council committee recommended that the Chapter be reorganized so the sworn disclosure statement, criminal record report and child abuse and neglect central registry report do not duplicate statements and make the document longer.</p> <p>Reviewers of the Chapter have liked the</p>	<p>Having to adjust to the new organizational flow.</p>

MATRIX OF SUBSTANCE AND ISSUES

	Part X- The Waiver	organization.	
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MATRIX OF SUBSTANCE AND ISSUES

COMPARISION REPEALED CHAPTER 190 TO NEW PROPOSED CHAPTER 191				
Repealed Chapter 190	Proposed Chapter 191	Change	Advantage to public and state staff by	Disadvantage to public and state staff by
Title				
Regulation for Criminal Record Checks for Child Welfare Agencies	Minimum Standards for Background Clearances for Child Welfare Agencies	The <i>Code</i> has been revised to include Child Abuse/Neglect Registry checks. To expand the title to Regulation for Criminal Record and Child Abuse/Neglect Registry Checks for Child Welfare Agencies would be too cumbers.	Having a shorter and broader title to refer to when reading or writing about this Chapter. The Child Day-Care Council committee recommended a shorter name.	Facilities and state staff affected by this regulation having to adjust to a new name.
Part I. Introduction.				
22 VAC 40-190-10 Definitions	22 VAC 40-191-10 Definitions			
Applicant for licensure or registration	Applicant for licensure or registration	Clarifies definition so it better identifies who the applicant is.	Clarifying whom the applicant is for background clearances.	None
Barrier crimes	Barrier crimes And 22 VAC 40-191-30 22 VAC 40-191-50 E 22 VAC 40-191-70 B	Removes description of specified crimes. This is now covered in 22 VAC 40-191-30 Disqualifying aspects of definitions are now in	Providing an updated list of barrier crimes that complies with 1998 <i>Code</i> changes. All the regulation statements are in the regulation section of the Chapter and not mixed with the definition.	None

MATRIX OF SUBSTANCE AND ISSUES

COMPARISON REPEALED CHAPTER 190 TO NEW PROPOSED CHAPTER 191				
Repealed Chapter 190	Proposed Chapter 191	Change	Advantage to public and state staff by	Disadvantage to public and state staff by
		22 VAC 40-191-50 E and 22 VAC 40-191-70 B.		
Central Criminal Records Exchange	Central Criminal Records Exchange	Removed through which the criminal record report request is processed. Information covered in 22 VAC 40-191-90 A 2 b.	N/A	N/A
Contracting organization	Contracting Organization	Used correct term family day homes instead of family day home providers.	N/A	N/A
Criminal history record report	Criminal history record report	None	N/A	N/A
Employee	Employee Also see Contract employee and Involved in the day-to-day operations of the facility	See attachment on Employee and Contract Employee Definition.	See attachment on Employee and Contract Employee Definition.	See attachment on Employee and Contract Employee Definition.
Facility	Facility	The names of the specific child welfare agencies that are covered by this chapter have been listed.	Easily identifying if this Chapter affects a facility.	None

MATRIX OF SUBSTANCE AND ISSUES

COMPARISON REPEALED CHAPTER 190 TO NEW PROPOSED CHAPTER 191				
Repealed Chapter 190	Proposed Chapter 191	Change	Advantage to public and state staff by	Disadvantage to public and state staff by
		This is needed as child day centers and child day center systems will be in a separate chapter.		
Officer of the board		This definition is no longer in Chapter 191. Chapter 191 uses Officer and Board members with the qualifier (i) Alone with, in control of, or supervising one or more children or (ii) involved in the day to day operations of a facility or officers and board members. See 22 VAC 40-191-40 A 4 c 22 VAC 40-191-50 B 22 VAC 40-191-60 B 3	Clarifying the condition under which a board member shall have background clearances. Clarifying that background clearances are required if an officer is directly involved with the care or children or in a management position making daily decisions.	None
Parent-volunteer	Parent-volunteer	None	N/A	N/A
Sworn disclosure statement	Sworn disclosure statement	Revised to include mandated central registry checks for family day homes and statement of compliance with § 63.1-	Complying with 1998 <i>Code</i> changes requiring sworn disclosure statement for founded complaints for child abuse or neglect.	None

MATRIX OF SUBSTANCE AND ISSUES

COMPARISION REPEALD CHAPTER 190 TO NEW PROPOSED CHAPTER 191				
Repealed Chapter 190	Proposed Chapter 191	Change	Advantage to public and state staff by	Disadvantage to public and state staff by
		198.3 of the <i>Code of Virginia</i> . Removed references to who must complete the statement as this is covered in the chapter. See 22 VAC 40-191-40 A 22 VAC 40-191-50 B 22 VAC 40-191-60 A, B, D		None
Volunteer	Volunteer	Chapter 191 a volunteer is person who provides services without pay and who is alone with children in performance of his duties. In the repealed Chapter 190, it was a volunteer alone with, in control of, or supervising one or more children outside the presence of paid facility staff.	Complying with § 63.1-198.1 for the <i>Code of Virginia</i> that states that the provision of this section of the <i>Code</i> shall apply only to volunteers who will be alone with any child in the performance of their duties.	None
These following definitions did not exist in repealed Chapter 190.				
	Applicant for Approval	Added	Defining a term used throughout document.	None

MATRIX OF SUBSTANCE AND ISSUES

COMPARISON REPEALED CHAPTER 190 TO NEW PROPOSED CHAPTER 191				
Repealed Chapter 190	Proposed Chapter 191	Change	Advantage to public and state staff by	Disadvantage to public and state staff by
	Approved	Added	Defining a term used throughout document.	None
	Background Clearances	Added	Using a comprehensive term when referring to all background clearances. This is easier when reading or writing about this Chapter.	Person reading the Chapter needing to refer to the definition.
	Central registry report	Added	Complying with 1998 <i>Code</i> changes mandating child abuse and neglect central registry reports.	None
	Child abuse/neglect history record request	Added	Complying with 1998 <i>Code</i> changes mandating child abuse and neglect central registry reports.	None
	Child Abuse and Neglect Registry	Added	Complying with 1998 <i>Code</i> change mandating child abuse and neglect central registry reports.	None
	Child welfare agency	Added	Defining term used in title and in <i>Code</i> .	None

MATRIX OF SUBSTANCE AND ISSUES

COMPARISION REPEALD CHAPTER 190 TO NEW PROPOSED CHAPTER 191				
Repealed Chapter 190	Proposed Chapter 191	Change	Advantage to public and state staff by	Disadvantage to public and state staff by
	Commissioner	Added	Defining term used throughout document.	None
	Contract agencies	Added	Defining term used in document.	None
	Contract Employee	Added	See attachment on Employee and Contract Employee Definitions.	See attachment on Employee and Contract Employee Definitions
	Department	Added	Defining term used throughout document.	None
	Department representative	Added	Defining term used throughout document.	None
	Disqualifying background	Added	Using a comprehensive term when referring to conditions that prohibit licensure, registration, approval, employment, contract employment, volunteering and, serving as a board member or officer. This makes it easier when reading or writing about the conditions that disqualify a person from assuming a role.	Person reading the Chapter needing to refer to definition when reading the Chapter.

MATRIX OF SUBSTANCE AND ISSUES

COMPARISON REPEALED CHAPTER 190 TO NEW PROPOSED CHAPTER 191				
Repealed Chapter 190	Proposed Chapter 191	Change	Advantage to public and state staff by	Disadvantage to public and state staff by
	Good character and reputation	Added	Defining term used throughout document.	None
	Involved in day-to-day operations of the facility	Added	See attachment on Employee and Contract Employee Definition.	See attachment on Employee and Contract Employee Definition.
	Licensed	Added	Defining term used throughout document.	None
	Other person or persons officially involved in the operations of a religious exempt center	Added	Complying with <i>Code</i> section covering religious exempt centers.	None
	Registered	Added	Defining term used throughout document.	None
	Religious exempt center	Added	Complying with § 63.1-198.2 of the <i>Code of Virginia</i> covering religious exempt centers.	None
	Sex offense felony for family day home	Added	Complying with § 63.1-198.3 of the <i>Code of Virginia</i> that does not allow a sex offender or child abuser to reside in a	None

MATRIX OF SUBSTANCE AND ISSUES

COMPARISION REPEALED CHAPTER 190 TO NEW PROPOSED CHAPTER 191				
Repealed Chapter 190	Proposed Chapter 191	Change	Advantage to public and state staff by	Disadvantage to public and state staff by
			family day home.	
22 VAC-40-190-20 Legal base and applicability.	None	Deleted from Chapter 191 as this is no longer required	Being consistent with standards for format of regulations.	None
Part II. Sworn Disclosure.				
22 VAC 40-190-30 A Sworn disclosure prior to assuming role	22 VAC 40-191-50 B 22 VAC 40-191-60 B 1b,2b,3b & 4b	No substantive change.	N/A	N/A
22 VAC 40-190-30 B False statement by person	22 VAC-40-191-10 definition of Sworn Disclosure statement	No substantive change.	N/A	N/A
22 VAC 40-190-30 C Attached & filed to criminal record report	22 VAC-40-191-110	The sworn disclosure statement included with maintenance requirements for all background clearances.	Making it easier for providers to maintain all background clearances the same way. Change based on Child Day-Care Council recommendation.	None

MATRIX OF SUBSTANCE AND ISSUES

COMPARISON REPEALED CHAPTER 190 TO NEW PROPOSED CHAPTER 191				
Repealed Chapter 190	Proposed Chapter 191	Change	Advantage to public and state staff by	Disadvantage to public and state staff by
Part III. The Criminal Record Report.				
22 VAC 40-190-40 A Prior to licensure Available commissioner	22 VAC 40-191-50 22 VAC 40-191-110 A	Expanded to include approvals. Expanded to include all background clearances.	Complying with <i>Code</i> §63.1-198.1. and complying with 1998 <i>Code</i> change adding central registry reports and clarify sworn disclosure shall be made available to the Commissioner.	None
22 VAC 40-190-40 B Prior 21st day of employment/volunteer Exception for approved providers	22 VAC 40-191-50 D 22 VAC 40-191-60 B 1b, 2b & 4b 22 VAC 40-191-50 B	No substantive change.	N/A	N/A
22 VAC 40-190-40 C Disqualified if barrier crime conviction	22 VAC 40-191-70 B	Expanded to include prior adult convictions and juvenile convictions and adjudications as part of the barrier crimes; and a founded complaint of child abuse within and outside the	Complying with 1998 <i>Code</i> changes mandating child abuse and neglect central registry reports.	None

MATRIX OF SUBSTANCE AND ISSUES

COMPARISON REPEALED CHAPTER 190 TO NEW PROPOSED CHAPTER 191				
Repealed Chapter 190	Proposed Chapter 191	Change	Advantage to public and state staff by	Disadvantage to public and state staff by
		Commonwealth.		
22 VAC 40-190-40 D Licensee or registered family home provider verify no barrier crime	22 VAC 40-191-90 E	Expanded to include central registry report and sworn disclosure.	Complying with 1998 <i>Code</i> changes mandating child abuse and neglect central registry reports.	None
22 VAC 40-190-40 E Kept confidential	22 VAC 40-191-90 D	Expanded to include central registry report.	Complying with 1998 <i>Code</i> changes mandating child abuse and neglect central registry reports.	None
22 VAC 40-190-40 F Accept criminal record report dated not more than 90 days	22 VAC 40-191-90 B & C	Expanded to include central registry report. Expanded to include officers and board members, persons residing in the home, licensees, registrants, and person who signs statement of intent to operate a religious exempt center	Complying with 1998 <i>Code</i> changes mandating child abuse and neglect central registry reports. Reducing costs by not requiring a new check if one is recent.	None Facility and department not knowing if a disqualifying background occurred within the last 90 days.
Validity of Reports				

MATRIX OF SUBSTANCE AND ISSUES

COMPARISON REPEALED CHAPTER 190 TO NEW PROPOSED CHAPTER 191				
Repealed Chapter 190	Proposed Chapter 191	Change	Advantage to public and state staff by	Disadvantage to public and state staff by
22 VAC 40-190-50 A Accept only original criminal record report	22 VAC 40-191-90 A 2	No substantive change.	N/A	N/A
22 VAC 40-190-50 A Exception	22 VAC 40-191-60 C	<p>Expanded to include sworn disclosure and central registry.</p> <p>Expanded to allow a contract agency for a contract employee or independent contractor who maintain the background clearances.</p> <p>Replaces a letter with the facility verifying the required background clearances and then maintaining copies</p> <p>Allows for a background</p>	<p>Complying with 1998 <i>Code</i> changes mandating child abuse and neglect central registry reports and sworn disclosure statement.</p> <p>Avoiding a facility having to incur costs of obtaining additional clearances.</p> <p>Facility verifying the clearances rather than the agency. This assures the facility has seen that there is no disqualifying background on the reports If a person is a sole contractor, it is critical that a person other than the contractor is verifying the clearances. Allowing a contractor to serve more facilities without</p>	<p>None</p> <p>None</p> <p>Facility needing to verify and maintain more documents as opposed to one letter.</p> <p>The clearance being as much as twelve months old.</p>

MATRIX OF SUBSTANCE AND ISSUES

COMPARISON REPEALED CHAPTER 190 TO NEW PROPOSED CHAPTER 191				
Repealed Chapter 190	Proposed Chapter 191	Change	Advantage to public and state staff by	Disadvantage to public and state staff by
		clearance to be 12 months old and still be acceptable when a contractor begins with a facility.	<p>incurring additional background clearance costs.</p> <p>If a contractor serves multiple facilities, then each time he begins serving a new facility within a year of obtaining background clearances, he is not required to obtain new clearances. A contractor serving multiple facilities usually occurs when a contractor provides a specialty service such a gym classes, computer classes, music lessons, tutoring, etc.</p>	
22 VAC 40-190-50 B Verifying report	22 VAC 40-191-90 E	<p>Expanded to include central registry report.</p> <p>Wording changed to the facility designee shall be charged with knowledge of all information in the clearance.</p>	<p>Complying with 1998 <i>Code</i> changes mandating child abuse and neglect central registry reports.</p> <p>Concise wording covering complete review of background clearance.</p>	<p>None</p> <p>Not specifying what is to be verified or how to determine that clearance is for the correct person.</p>

MATRIX OF SUBSTANCE AND ISSUES

COMPARISON REPEALED CHAPTER 190 TO NEW PROPOSED CHAPTER 191				
Repealed Chapter 190	Proposed Chapter 191	Change	Advantage to public and state staff by	Disadvantage to public and state staff by
				Facility designee is too broad, which means a person other than the administrator or management staff could be designated.
22 VAC 40-190-50 C Report remains valid		This statement is removed but is covered by 22 VAC 40-191-60.	None	None
22 VAC 40-190-50 C Exception- Voluntary registered	22 VAC 40-191-60F	Expanded to include central registry report and wording changed to say prior to renewal rather than every two years.	Complying with 1998 <i>Code</i> changes mandating child abuse and neglect central registry reports. Clarifying that voluntary registered family day homes are to submit new background at renewal.	None
22 VAC 40-190-50 D Terminate and begin a new facility the criminal record report is not valid	22 VAC 40-191-100	To allow a person that leaves a facility and the criminal record report or central registry report is 90 days old or less, the person may take the report or reports with him.	The facility will not incur the cost of obtaining new clearances when there is still a valid clearance (one that is within the last 90 days) if the person goes to another facility.	The original facility will no longer having an original criminal record report on file but will have a statement that the copy is of a verified original.
22 VAC 40-190-50 D	22 VAC 40-191-100	The period for a leave of	Reducing the cost to facilities	The facilities not

MATRIX OF SUBSTANCE AND ISSUES

COMPARISON REPEALED CHAPTER 190 TO NEW PROPOSED CHAPTER 191				
Repealed Chapter 190	Proposed Chapter 191	Change	Advantage to public and state staff by	Disadvantage to public and state staff by
Exception 1. & 2, transfer lapse 30 days		absence to be increased from 6 months to 12 months before new background clearances is needed. Expanded absences to include termination of employment.	or individual by not having to get background clearances on employees/volunteers that have left the facility within the last 12 months. The Child Day-Care Council recommended this change.	knowing if a person acquired a disqualifying backgrounds during the additional six months.
Part III Maintenance				
22 VAC 40-190-60 A Where to maintain criminal record report.	22 VAC 40-191-110 B	Expanded to include central registry report and sworn disclosure.	Complying with 1998 <i>Code</i> changes mandating child abuse and neglect central registry reports and sworn disclosure statement.	None
22 VAC 40-190-60 B Length maintained	22 VAC 40-191-110	Expanded to include central registry report and sworn disclosure.	Complying with 1998 <i>Code</i> changes mandating child abuse and neglect central registry reports and sworn disclosure statement.	None
22 VAC 40-190-60 B Exception –letter	22 VAC 40-191-100 E 2	None	N/A	N/A

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COMPARISON REPEALED CHAPTER 190 TO NEW PROPOSED CHAPTER 191				
Repealed Chapter 190	Proposed Chapter 191	Change	Advantage to public and state staff by	Disadvantage to public and state staff by
22 VAC 40-190-60 C When employees rotated	22 VAC 40-191-110	<p>Expanded to include central registry report and sworn disclosure.</p> <p>Expanded to include all persons that work at more than one facility even if the facilities are owned/operated by different entities.</p>	<p>Complying with 1998 <i>Code</i> changes mandating child abuse and neglect central registry reports and sworn disclosure statement.</p> <p>Eliminating cost to the facility or individual of obtaining duplicative criminal record checks.</p> <p>If a person works at more than one facility, then multiple original criminal record checks do not have to be obtained and paid for. The check still can not be older than 90 days.</p>	<p>None</p> <p>The non-primary work place facility no longer having an original criminal record report on file but will have a statement that the copy is of a verified original.</p>
22 VAC 40-190-60 D Maintain locked files	None	<p>This has been deleted.</p> <p>22 VAC 40-191-90 D requires that the background clearances be kept confidential.</p>	<p>Responsibility is on the facility to determine how to keep the clearances confidential. Example such a locked room instead of locked file</p>	<p>Facility needing to explain how files are being kept confidential.</p>

MATRIX OF SUBSTANCE AND ISSUES

COMPARISON REPEALED CHAPTER 190 TO NEW PROPOSED CHAPTER 191				
Repealed Chapter 190	Proposed Chapter 191	Change	Advantage to public and state staff by	Disadvantage to public and state staff by
Board				
22 VAC 40-190-70 A Obtained for Board members	22 VAC 40-191-40 A 4 c 22 VAC 40-191-50 B 22 VAC 40-191-60 B 3	<p>Definition of involved in the day-to-day operations of the facility has been added.</p> <p>Changed from 21 days to obtain the criminal record report when the board member assumes the position to prior to assuming position.</p> <p>Added child abuse and neglect central registry reports and sworn disclosure statement.</p>	<p>Clarifying under what conditions a board member shall have background clearances. Clarifying that background clearance are required if an officer is directly involved with the care or children or in a management position making daily decisions</p> <p>Complying with § 63.1-198, which requires background clearances prior to a person assuming board duties.</p> <p>Complying with 1998 <i>Code</i> changes mandating child abuse and neglect central registry reports and sworn disclosure statement.</p>	None

MATRIX OF SUBSTANCE AND ISSUES

COMPARISON REPEALED CHAPTER 190 TO NEW PROPOSED CHAPTER 191				
Repealed Chapter 190	Proposed Chapter 191	Change	Advantage to public and state staff by	Disadvantage to public and state staff by
22 VAC 40-190-70 B Board member changes position	22 VAC 40-191-100 C	Added child abuse and neglect central registry reports and sworn disclosure statement.	Complying with 1998 <i>Code</i> changes mandating child abuse and neglect central registry reports and sworn disclosure statement.	None
22 VAC 40-190-70 C Advisory boards not required to obtain check	22 VAC 40-191-10	None as same intent covered in definition of involved in the day-to-day operations excludes advisory boards.	N/A	N/A

MATRIX OF SUBSTANCE AND ISSUES

Attachment Employee and Contract Employee Definitions Explanation of Change, Advantages and Disadvantages

The definition of employee has three significant changes. These are (1) changing the employees affected, (2) separating out and changing the contract employee, and (3) adding provider assistant in a family day home as an employee. Below is information on each of these changes.

2. Changing the employees affected

Explanation of Change

In Chapter 190, “employee” means all personnel hired at a facility regardless of role, service, age, function, or duration of employment at the facility.”

In Chapter 191, employee means a person hired by a facility. A qualifier is used in the Chapter 191 stating that background clearances only apply to employees who are:

(i) Alone with, in control of, or supervising one or more children or (ii) involved in the day to day operations of a facility.

“Involved in the day to day operations of a facility” means being:

5. in a supervisory or management position which makes daily decisions regarding the operation of the facility;
6. counted by the facility for purposes of staff-to-children ratios;
7. a person who provides casework services for a child placing agency; or
8. a home visitor employed by a licensed family day systems.

See
22 VAC 40-191-40 A 4 a
22 VAC 40-191-50 B
22 VAC 40-191-60 B 1

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Below are examples of the type of employees that would no longer be required to have clearances unless they meet the criteria of i) alone with, in control of, or supervising one or more children or (ii) involved in the day to day operations of a facility.

- . A janitor or cook that works at a facility;
- . A person employed for a specialty service such as providing music lessons;
- . A secretary at a licensed child-placing agency; and
- . An account clerk working for a licensed family day system.

Advantage

Clarifies which employees are affected by background clearances. Reduces confusion and questions from providers and state licensing inspectors on which employees require background clearances. Eliminates the cost of \$20.00 per individual to providers of obtaining background clearances on certain limited number of employees.

Disadvantage

Not every person that is hired by a facility will be required to have background clearance.

2. Separating and changing the contract employee definition

Explanation of Change

Contract employees have been taken out of the definition of employee. Three changes have occurred to the substantive definition of contract employee. These are:

d. In chapter 191 , contract employees has been given the same qualifier as employees:

- (i) Alone with, in control of, or supervising one or more children or (ii) involved in the day to day operations of a facility.

See

22 VAC 40-191-40 A 4 b

22 VAC 40-191-50 B

22 VAC 40-191-60 B 2

MATRIX OF SUBSTANCE AND ISSUES

- b. The scope of the contract employee has been narrowed to contract employees that provide services to a child or children.
- c. The scope has been broadened to include a person or person working for contract agency with which the parent has an agreement to provide services to a child or children at the facility.

Advantage

- d. Clarifies which contract employees are affected by background clearances. Reduce confusion and questions from providers and state licensing inspectors on which employees require background clearances.
- e. Eliminates the \$20.00 background clearance expense per individual to providers for contract staff who are not providing services to a child or children. This would eliminate requiring background clearances on a contract staff such as an electrician, gardener or secretary or any staff that would not be working with the children.
- f. A parent sometimes will make an agreement for a person to come to the facility and provide a service such as speech therapy, gymnastics, and music to his child. This allows for a facility to require a background clearance for this person if the person will be alone with, in control of, or supervising one or more children while at the facility. This assures clearances have been done on a person alone with a child or children.

Disadvantage

Of a and b not every person that is hired by a facility will be required to have background clearance.

Of c. requires additional background clearance, and the facility or person having the background clearance would incur the cost.

- 4. Adding to the definition of an employee, a provider assistant in a family day home

Explanation of Change

Provider assistant in a family day home was added to the definition of employee.

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Advantage

For Chapter 191, to be consistent with Requirements for Providers for Voluntarily Registered Family Day Homes that require background clearances for provider assistants.

Disadvantage

None, this requirement already exists.

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ADDITIONS TO CHAPTER 191 NOT IN REPEALED CHAPTER 190				
Proposed CHAPTER 191	Repealed Chapter 190	CHANGE	Advantage to public and state staff by	Disadvantage to public and state staff by
Chapter 191 has a different flow and new sections	22 VAC 40-190-20	Deleted these sections	Creating a regulation by provider flow. Continuing an outline by document would have created duplication of wording, as most requirements are the same for all three-background clearances.	None
	22 VAC 40-190-30	22 VAC 40-190-20, legal base and applicability are no longer required.		
	22 VAC 40-190-40			
	22 VAC 40-190-50	22 VAC-190-30 through 22 VAC 40-190-70 deleted as background clearance requirements have been outlined in terms of provider flow.		
	22 VAC 40-190-60			
	22 VAC 40-190-70			
Part I. Introduction.				
Title	See Chart COMPARISION REPEALED CHAPTER 190 TO NEW PROPOSED CHAPTER 191			
22 VAC 40-191-10 Definitions	See Chart COMPARISION REPEALED CHAPTER 190 TO NEW PROPOSED CHAPTER 191			

MATRIX OF SUBSTANCE AND ISSUES

ADDITIONS TO CHAPTER 191 NOT IN REPEALED CHAPTER 190				
Proposed CHAPTER 191	Repealed Chapter 190	CHANGE	Advantage to public and state staff by	Disadvantage to public and state staff by
22 VAC 40-191-20 Licensed child day center systems		<p>Added licensed child day center systems. The regulations for systems are promulgated by the Child Day Care Council and the State Board.</p> <p>This references that the licensed child day center systems are set forth in 22 VAC 15-051-10 et seq.</p> <p>Currently no licensed child day center systems exist.</p>	Explaining where to find regulations for licensed child day center systems and does not duplicate information.	None
22 VAC 40-191-30 Barrier crimes specified by § 63.1-198.1 of the <i>Code of Virginia</i>	Previously this was just listed in the definition.	Expansion of barrier crimes was so extensive and it was clearer to list the crimes in a separate section.	Providing a list of barrier crimes and complying with the expansion of convictions mandated by the 1998 <i>Code</i> changes.	None
Part II. Persons Affected By Background Clearances.				

MATRIX OF SUBSTANCE AND ISSUES

ADDITIONS TO CHAPTER 191 NOT IN REPEALED CHAPTER 190				
Proposed CHAPTER 191	Repealed Chapter 190	CHANGE	Advantage to public and state staff by	Disadvantage to public and state staff by
22 VAC 40-191-40		Section added. 22 VAC 40-191-40 A and B	Providing a clear reference of which persons, associated with a facility, are affected by background clearances. This section is referred to multiple times throughout the document.	None
		22 VAC 40-191-40 A 4 Added qualifier of (i) alone with, in control of, or supervising one or more children or (ii) involved in the day to day operations of a facility for employees, contract employees, and officers and board members. Also added to: 22 VAC 40-191-50 B 22 VAC 40-191-60 B	See attachment on Employee and Contract Employee Definitions and officer of the board definition in matrix on REPEALED CHAPTER 190 TO NEW PROPOSED CHAPTER 191.	See attachment on Employee and Contract Employee Definitions and officer of the board definition in chart in matrix on REPEALED CHAPTER 190 TO NEW PROPOSED CHAPTER 191.

MATRIX OF SUBSTANCE AND ISSUES

ADDITIONS TO CHAPTER 191 NOT IN REPEALED CHAPTER 190				
Proposed CHAPTER 191	Repealed Chapter 190	CHANGE	Advantage to public and state staff by	Disadvantage to public and state staff by
		<p>22 VAC 40-191-40 A 6, Added that adults, age 18 years and older who reside in a regulated family day home are affected by background clearances.</p> <p>Added that adults, age 18 years and older who reside in a (i) licensed independent foster home or (ii) an adoptive or a foster home approved by a licensed child placing agency are affected by background clearances.</p> <p>Also added to: 22 VAC 40-191-50 B 22 VAC 40-191-60 D</p>	<p>Being consistent with Minimum Standards for Licensed Family Day Homes.</p> <p>Maintaining the safety of Children.</p>	<p>None</p> <p>Providers will incur a new cost of obtaining criminal record reports and child abuse and neglect registry reports for persons that reside in their home that are age 18 years or older. The cost is \$15.00 for a criminal record report and \$5.00 for a central registry report.</p>

MATRIX OF SUBSTANCE AND ISSUES

ADDITIONS TO CHAPTER 191 NOT IN REPEALED CHAPTER 190				
Proposed CHAPTER 191	Repealed Chapter 190	CHANGE	Advantage to public and state staff by	Disadvantage to public and state staff by
		<p>22 VAC 40-191-40 B</p> <p>Added that persons age 14 years and older who reside in a licensed family day home shall have central registry checks.</p> <p>This regulation was expanded to include the other types of family day homes, voluntarily registered, family day homes, and family day homes approved by licensed systems.</p> <p>Also added to:</p> <p>22 VAC 40-191-50 B & 22 VAC 40-191-60 E</p>	<p>Complying with Minimum Standards for Licensed Family Day Home that require persons age 14 years and older to have central registry checks.</p> <p>Creating consistency for all regulated family day homes by requiring the same requirement for voluntarily registered family day homes and family day homes approved by licensed family day systems.</p>	<p>None as already required.</p> <p>Providers incurring a new cost of obtaining central registry reports for children that reside in their home that are age 14 to 18 years old. This cost is \$5.00 per person. Voluntarily registered homes will be required to obtain this check at every renewal which is every two years.</p>

MATRIX OF SUBSTANCE AND ISSUES

ADDITIONS TO CHAPTER 191 NOT IN REPEALED CHAPTER 190				
Proposed CHAPTER 191	Repealed Chapter 190	CHANGE	Advantage to public and state staff by	Disadvantage to public and state staff by
Part III. Background Clearances At Initial Application For Licensure, Registration Or Approval.				
22 VAC 40-191-50		Section Added.	Clarifying what is needed at initial application for all background clearances. The section lists out facilities and persons requiring background clearances.	None
		22 VAC 40-191-50 A Lists facilities affected.	Easily identifying if a facility is affected by this regulation.	None

MATRIX OF SUBSTANCE AND ISSUES

ADDITIONS TO CHAPTER 191 NOT IN REPEALED CHAPTER 190				
Proposed CHAPTER 191	Repealed Chapter 190	CHANGE	Advantage to public and state staff by	Disadvantage to public and state staff by
		<p>22 VAC 40-191-50 B Added central registry reports and refers back to persons affected in 22 VAC 40-191-40 B.</p>	<p>Complying with 1998 <i>Code</i> changes mandating child abuse and neglect central registry reports.</p>	<p>Requiring central registry checks became a new cost to licensed child-placing agencies effective July 1, 1998. The cost to the facility or person that the central registry is being obtained for is \$5.00 per person for new staff. The majority of facilities covered by this Chapter were obtaining central registry checks prior to July 1, 1998, as the facility regulation required this. This is a new requirement for child-placing agencies and religious exempt day centers.</p>

MATRIX OF SUBSTANCE AND ISSUES

ADDITIONS TO CHAPTER 191 NOT IN REPEALED CHAPTER 190				
Proposed CHAPTER 191	Repealed Chapter 190	CHANGE	Advantage to public and state staff by	Disadvantage to public and state staff by
		22 VAC 40-191-50 C Added that the facility or department shall inform the person that background clearances are being done.	Person being screened will know that a criminal record check is being done. The person may not know that a criminal history has been requested, as the person is not required to sign the request form.	None
		22 VAC 40-191-50 D Added that the facility shall not be penalized if the center has submitted the criminal history request report within seven days of person being employed or volunteering.	Preventing facilities from being penalized if they have requested clearances. Background clearances are not always being processed by the state within 21 days.	None
		22 VAC 40-191-50 E was covered in repealed chapter 190.	None	None

MATRIX OF SUBSTANCE AND ISSUES

ADDITIONS TO CHAPTER 191 NOT IN REPEALED CHAPTER 190				
Proposed CHAPTER 191	Repealed Chapter 190	CHANGE	Advantage to public and state staff by	Disadvantage to public and state staff by
		<p>22 VAC 40-191-50 F Added applicant for family day homes shall state on the sworn disclosure if he has been convicted of a sex offense felony or is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth or if he knows that any other person, regardless of age, who resides in the house has been convicted of a sex offense felony or is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth.</p>	<p>Providing additional protection for children through a statement from family home providers that they are in compliance with § 63.1-198.3.</p>	<p>None as there is no cost and the provider must already complete the statement. This will just be an additional question on the statement.</p>

MATRIX OF SUBSTANCE AND ISSUES

ADDITIONS TO CHAPTER 191 NOT IN REPEALED CHAPTER 190				
Proposed CHAPTER 191	Repealed Chapter 190	CHANGE	Advantage to public and state staff by	Disadvantage to public and state staff by
Part IV. Background Clearances After Initial Licensure, Registration Or Approval.				
22 VAC 40-191-60		<p>Section added</p> <p>Central registry report added to 22 VAC 40-191-60 B, C,D, E, F and G</p>	<p>Clarifying to providers what they need to do at initial application for all background clearances.</p> <p>Complying with 1998 <i>Code</i> changes mandating child abuse and neglect central registry reports.</p>	None
		22 VAC 40-191-60 A References facilities affected.	Easily identifying if a facility is affected by this regulation.	None

MATRIX OF SUBSTANCE AND ISSUES

ADDITIONS TO CHAPTER 191 NOT IN REPEALED CHAPTER 190				
Proposed CHAPTER 191	Repealed Chapter 190	CHANGE	Advantage to public and state staff by	Disadvantage to public and state staff by
		<p>22 VAC 40-191-60 B Lists when background clearances needed. Same as required in repealed Chapter 190, except for officers and board members changed from 21 days to obtain the criminal record report when the board member assumes the position to prior to assuming position.</p> <p>References qualifier of (i) alone with, in control of, or supervising one or more children or (ii) involved in the day to day operations of a facility for employees, contract employees and officers and board members. See 22 VAC 40-191-40 A</p>	<p>Complying with § 63.1-198, which requires background clearances prior to a person's assuming board duties.</p> <p>See attachment on Employee and Contract Employee Definitions and officer of the board definition in matrix on REPEALED CHAPTER 190 TO NEW PROPOSED CHAPTER 191.</p>	<p>None</p> <p>See attachment on Employee and Contract Employee Definitions and officer of the board definition in matrix on REPEALED CHAPTER 190 TO NEW PROPOSED CHAPTER 191.</p>

MATRIX OF SUBSTANCE AND ISSUES

ADDITIONS TO CHAPTER 191 NOT IN REPEALED CHAPTER 190				
Proposed CHAPTER 191	Repealed Chapter 190	CHANGE	Advantage to public and state staff by	Disadvantage to public and state staff by
		<p>22 VAC 40-191-60 C Background clearances for contract employees or temporary staff.</p> <p>See Comparison of Repealed 190 to New Proposed Chapter 191 Part III Validity of reports 22 VAC 40-190-50A Exception.</p>	<p>See matrix on REPEALED CHAPTER 190 TO NEW PROPOSED CHAPTER 191, Part III Validity of reports 22 VAC 40-190-50 A Exception</p>	<p>See matrix on REPEALED CHAPTER 190 TO NEW PROPOSED CHAPTER 191, Part III Validity of reports 22 VAC 40-190-50A Exception.</p>
		<p>22 VAC 40-191-60 D explanation covered in 22 VAC 40-191-40 A 6.</p>		
		<p>22 VAC 40-191-60 E explanation covered in 22 VAC 40-191-40 B.</p>		

MATRIX OF SUBSTANCE AND ISSUES

ADDITIONS TO CHAPTER 191 NOT IN REPEALED CHAPTER 190				
Proposed CHAPTER 191	Repealed Chapter 190	CHANGE	Advantage to public and state staff by	Disadvantage to public and state staff by
		<p>22 VAC 40-191-60 F Changed voluntarily registered family day homes shall obtain background clearances prior to <u>each renewal</u> of registration rather than every two years. These clearances shall be included with their application for renewal.</p>	<p>Being consistent with Voluntary Registration of Family Day Homes, Requirement for Providers.</p>	<p>None as already in regulations for voluntarily registered family day homes.</p>
		<p>22 VAC 40-191-60G If the person or persons designated as the applicant; licensee; approved individual or individuals; or registrant or registrants changes, the facility shall obtain background clearances on the new designated person or persons.</p> <p>Repealed Chapter 190 covered this.</p>	<p>Clearly stating that this is required.</p>	<p>None</p>

MATRIX OF SUBSTANCE AND ISSUES

ADDITIONS TO CHAPTER 191 NOT IN REPEALED CHAPTER 190				
Proposed CHAPTER 191	Repealed Chapter 190	CHANGE	Advantage to public and state staff by	Disadvantage to public and state staff by
		22 VAC 40-191-60H Added that the facility shall not be penalized if the center has submitted the criminal history request report within seven days of person being employed or volunteering.	Preventing the facilities from being penalized if they have requested clearances. Background clearances are not always being processed by the state within 21 days.	None
		22 VAC 40-191-60 I Added that the facility or department shall inform the person that background clearances are being done.	Person being screened knows that a criminal record check is being done. The person may not know that a criminal history has been requested, as the person is not required to sign the request form.	None
Part V. Consequences Associated With Background Clearances.				
22 VAC 40-191-70 Consequences associated with background clearances		Section added	Providing clearly stated consequences of disqualifying backgrounds including founded complaints as required by 1998 Code changes.	None

MATRIX OF SUBSTANCE AND ISSUES

ADDITIONS TO CHAPTER 191 NOT IN REPEALED CHAPTER 190				
Proposed CHAPTER 191	Repealed Chapter 190	CHANGE	Advantage to public and state staff by	Disadvantage to public and state staff by
		22 VAC 40-191-70 A Refers to list of facilities in Part II. 22 VAC-191-50 A.	Easily identifying if a facility is affected by this regulation.	None
		22 VAC 40-191-70 B No facility shall permit a person listed in Part II, 22 VAC 40-191-40, to assume or maintain his duties with the facility if the facility has knowledge that the person has a disqualifying background. This was included in 22 VAC-190-10 but not clearly stated.	Clearly stating that a person can not assume or maintain his duties with the facility if the facility has knowledge that the person has a disqualifying background.	None
		22 VAC 40-191-70 C Added about sex offenders in family day homes.	Providing additional protection for children as required by § 63.1-198.3 of the <i>Code of Virginia</i> .	None
		22 VAC 40-191-70 D Department may deny, suspend, or revoke the licensure, registration, or approval if the facility fails to comply with terms of this chapter.	Meeting requirements of <i>Code</i> §§ 63.1-198 and 63.1-198.1.1.	None

MATRIX OF SUBSTANCE AND ISSUES

ADDITIONS TO CHAPTER 191 NOT IN REPEALED CHAPTER 190				
Proposed CHAPTER 191	Repealed Chapter 190	CHANGE	Advantage to public and state staff by	Disadvantage to public and state staff by
		22 VAC 40-191-70 E The facility or department shall provide a person with information appearing on the background clearance if the person is denied approval or employment.	Meeting requirements of <i>Code</i> § 63.1-198.1.1.	None
		22 VAC 40-191-70 F If the Department becomes aware that a person listed in Part II, 22 VAC 15-051-40 has a disqualifying background; the department shall be permitted to release this information to the facilities, which have a legitimate interest.	The facilities becoming aware that a person has a disqualifying background and then taking the required action to terminate this person and protect children.	None
Part VI. Background Clearances For Religious Exempt Child Day Centers.				

MATRIX OF SUBSTANCE AND ISSUES

ADDITIONS TO CHAPTER 191 NOT IN REPEALED CHAPTER 190				
Proposed CHAPTER 191	Repealed Chapter 190	CHANGE	Advantage to public and state staff by	Disadvantage to public and state staff by
22 VAC 40-191-80		Section added	Establishing regulations that comply with § 63.1-198. 2 of the <i>Code of Virginia</i> and establishing consistent regulations for verifying, duration and maintenance of background clearances.	Requiring central registry checks became a new cost to religious exempt child day centers effective July 1, 1998. The cost to the facility or person that the central registry is being obtained for is \$5.00 per person for new staff.
PART VII. Verifying Background Clearances.				
22-VAC-191-90		Section added Changes from repealed Chapter 190 covered in Comparison of Repealed 190 to New Proposed Chapter 191.	Clarifying what the facility must do to verify reports; includes requirements for central registry reports mandated the 1998 <i>Code</i> changes.	None
		22-VAC-191-90 A Criteria for valid background clearances.	Providing information on valid background clearances and in compliance with <i>Code</i> .	None

MATRIX OF SUBSTANCE AND ISSUES

ADDITIONS TO CHAPTER 191 NOT IN REPEALED CHAPTER 190				
Proposed CHAPTER 191	Repealed Chapter 190	CHANGE	Advantage to public and state staff by	Disadvantage to public and state staff by
		22-VAC-191-90 B & C Acceptance of background clearance that is dated 90 days or prior.	See 22 VAC 40-190-40 F matrix on Changes from repealed Chapter 190	See 22 VAC 40-190-40 F matrix on Changes from repealed Chapter 190
		22 VAC-191-90 D Background clearances kept confidential was in 22 VAC 40-190 F and has been expanded to include central registry report.	Complying with 1998 <i>Code</i> changes mandating child abuse and neglect central registry reports.	None
		22-VAC-191-90 E Facility's designee review background clearances and department reviews background clearances for applicants for licensure and licensee.	See 22 VAC 40-190-50 B in matrix on REPEALED CHAPTER 190 TO NEW PROPOSED CHAPTER 191.	See 22 VAC 40-190-50 B in matrix on REPEALED CHAPTER 190 TO NEW PROPOSED CHAPTER 191.
Part VIII. Duration of background clearances.				

MATRIX OF SUBSTANCE AND ISSUES

ADDITIONS TO CHAPTER 191 NOT IN REPEALED CHAPTER 190				
Proposed CHAPTER 191	Repealed Chapter 190	CHANGE	Advantage to public and state staff by	Disadvantage to public and state staff by
22 VAC 40-191-100		Section added	Clarifying for facilities how long background clearances are valid and complying with 1998 <i>Code</i> changes mandating child abuse and neglect central registry reports and sworn disclosure statement.	None
		22 VAC 40-191-100A Allows a person that leaves a facility and the criminal record report or central registry report is 90 days old or less, the person may take the report or reports with him.	The new facility not having to incur the cost of obtaining new clearances when there is still a valid clearance (one that is within the last 90 days) or if the person goes to another facility.	None

MATRIX OF SUBSTANCE AND ISSUES

ADDITIONS TO CHAPTER 191 NOT IN REPEALED CHAPTER 190				
Proposed CHAPTER 191	Repealed Chapter 190	CHANGE	Advantage to public and state staff by	Disadvantage to public and state staff by
		22 VAC 40-191-100 B Change the period for a leave of absence to be increased from 6 months to 12 months before new background clearances are needed. Expanded absence to include termination of employment.	Eliminating the cost of having to get clearances on employees/volunteers that are on a leave of absence. The Child Day-Care Council committee recommended this.	The facilities not knowing if a person acquired a disqualifying backgrounds during the additional six months.
		22 VAC 40-191-100 C No additional background clearances when board members change was already in Chapter 190, 22-VAC 40-190-70 B.	None	None
Part IX. Maintenance of background clearances.				

MATRIX OF SUBSTANCE AND ISSUES

ADDITIONS TO CHAPTER 191 NOT IN REPEALED CHAPTER 190				
Proposed CHAPTER 191	Repealed Chapter 190	CHANGE	Advantage to public and state staff by	Disadvantage to public and state staff by
22 VAC 40-191-110 Maintenance of background clearances.		<p>Section added Requirements 22 VAC 40-191-110 A, B, and D are consistent with maintaining requirements for criminal record report in repealed Chapter 190.</p> <p>Added maintenance of central registry checks and sworn disclosure statement.</p>	<p>Providing consistency for maintenance of all background clearances and including 1998 mandated child abuse and neglect central registry reports and sworn disclosure statements.</p>	None

MATRIX OF SUBSTANCE AND ISSUES

ADDITIONS TO CHAPTER 191 NOT IN REPEALED CHAPTER 190				
Proposed CHAPTER 191	Repealed Chapter 190	CHANGE	Advantage to public and state staff by	Disadvantage to public and state staff by
		<p>Added 22 VAC 40-191-110C If a facility is not a primary work place for a person, the facility shall maintain at a designated location the following:</p> <ol style="list-style-type: none"> 1. A copy of the central registry report, 2. An original sworn disclosure statement, and 3. A copy of the original criminal record report with a statement that the facility designee has viewed and verified the original. 	<p>Eliminating the cost to the facility or individual of having to obtain duplicative criminal record reports.</p> <p>Eliminate the cost of facilities having to get duplicate criminal record reports and central registry reports when a person is working for more than one facility at the same time.</p>	<p>The non-primary workplace will no longer have an original criminal record report on file but will have a statement that the copy is of a verified original.</p>
PART X. The Waiver.				
22 VAC 40-191-120 through 22 VAC 40-191-170.		Section added	Complying with § 63.1-198.4 of the <i>Code of Virginia</i> which mandated by the 1998 <i>Code</i> changes.	None